

THE
Free-holders
GRAND INQUEST,

Touching Our
Sovereign Lord the KING
And His
PARLIAMENT.

To which are added
OBSERVATIONS
UPON
FORMS of GOVERNMENT.

Together with
Directions for Obedience to Governours
in Dangerous and Doubtful Times.

By the Learned Sir *ROBERT FILMER*, Knight.

Claudian. de laudibus Stiliconis.
*Fallitur egregio quisquis sub Principe credit
Servitium: Nunquam Libertas gratior extat
Quam sub Rege pio. ———*

L O N D O N,
Printed in the Year MDCLXXIX.

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The Author's

PREFACE.

THere is a general Belief, that the Parliament of England was at first an Imitation of the Assembly of the Three Estates in France: therefore in order to prepare the Understanding in the Recerche we have in hand, it is proper to give a brief Accompt of the mode of France in those Assemblies: Scotland and Ireland being also under the Dominion of the King of England; a touch of the manner of their Parliaments shall be by way of Preface.

1. In France, the Kings Writ goeth to the Bailiffs, Seneschals, or Stewards of Liberties, who issue out Warrants to all

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such as have Fees and Lands within their Liberties, and to all Towns, requiring all such as have any Complaints, to meet in the Principal City, there to choose two or three Delegates, in the name of that Province, to be present at the General Assembly.

At the day appointed, they meet at the Principal City of the Bailiwick. The King's Writ is read, and every man called by name, and sworn to choose honest men, for the Good of the King and Commonwealth, to be present at the General Assembly as Delegates, faithfully to deliver their Grievances, and Demands of t^e Province. Then they choose their Delegates, and swear them. Next, they consult what is necessary to be complained of, or what is to be desired of the King: and of these things they make a Catalogue or Index. And because every man should freely propound his Complaint or Demands, there is a Chest placed in the Town-

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Town-Hall, into which every man may cast his Writing. After the Catalogue is made and Signed, it is delivered to the Delegates to carry to the General Assembly.

All the Bailiwicks are divided into twelve Classes. To avoid confusion, and to the end there may not be too great Delay in the Assembly, by the Gathering of all the Votes, every Classis compiles a Catalogue or Book of the Grievances and Demands of all the Bailiwicks within that Classis, then these Classes at the Assembly compose one Book of the Grievances and Demands of the whole Kingdom. This being the order of the Proceedings of the third Estate; the like order is observed by the Clergy and Nobility. When the three Books for the three Estates are perfected, then they present them to the King by their Presidents. First, the President for the Clergy begins his Oration on his knees, and the King

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commanding, he stands up bare-headed, and proceeds. And so the next President for the Nobility doth the like. But the President for the Commons begins and ends his Oration on his knees. Whilst the President for the Clergy speaks, the rest of that Order rise up, and stand bare, till they are bid by the King to sit down, and be covered, and so the like for the Nobility. But whilst the President of the Commons speaks, the rest are neither bidden to sit, or be covered. Thus the Grievances and Demands being delivered, and left to the King and His Counsel, the General Assembly of the three Estates endeth, Atque ita totus actus concluditur.

Thus it appears, the General Assembly was but an orderly way of presenting the Publick Grievances and Demands of the whole Kingdom, to the consideration of the King : Not much unlike the antient Usage of this Kingdom for a long time, when all Laws were nothing else but the
King's

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King's Answers to the Petitions presented to Him in Parliament, as is apparent by very many Statutes, Parliament-Rolls, and the Confession of Sir Edw. Coke.

2. In Scotland, about twenty dayes before the Parliament begins, Proclamation is made throughout the Kingdom, to deliver in to the King's Clerk or Master of the Rolls, all Bills to be exhibited that Sessions, before a certain day: then are they brought to the King, and perused by Him: and onely such as he allows are put into the Chancellour's hand, to be propounded in Parliament, and none others: And if any man in Parliament speak of another matter, than is allowed by the King, the Chancellour tells him, there is no such Bill allowed by the King. When they have passed them for Laws, they are presented to the King, who, with his Scepter put into His hand by the Chancellor, ratifies them, and if there be any thing the King dislikes, they raze it out before.

3. In

" The Author's Preface.

3. *In Ireland, the Parliament, as appears by a Statute made in the Tenth year of Hen. 7. c. 4. is to be after this manner: No Parliament is to be holden but at such Season as the King's Lieutenant and Council there, do first certifie the King, under the Great Seal of that Land, the Causes and Considerations, and all such Acts as they think fit should pass in the said Parliament. And such Causes and Considerations, and Acts affirmed by the King and his Council to be good and expedient for that Land: And His Licence thereupon as well in affirmation of the said Causes and Acts, as to summon the Parliament under His Great Seal of England had and obtained. That done, a Parliament to be had and holden after the Form and Effect afore rehearsed, and if any Parliament be holden in that Land contrary to the Form and Provision afore-said, it is deemed void, and of none Effect in Law. It is provided, that all such*
Bills

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Bills as shall be offered to the Parliament there; shall first be transmitted hither under the Great Seal of that Kingdom, and having received Allowance and Approbation here, shall be put under the Great Seal of this Kingdom, and so returned thither to be preferred to the Parliament. By a Statute of 3 and 4 of Philip and Mary, for the expounding of Poynings Act, it is ordered, for the King's Passing of the said Acts in such Form and Tenor as they should be sent into England, or else for the Change of them, or any part of them.

After this shorter Narrative of the Usage of Parliaments in our Neighbour and Fellow Kingdoms, it is time the inquisitio magna of our own be offered to the Verdict or Judgment of a moderate and intelligent Reader.

RE-

REFLECTIONS
Concerning the
ORIGINAL
OF
GOVERNMENT,

Upon { I. Aristotle's *Politiques*.
II. Mr. Hobs's *Leviathan*.
III. Mr. Milton *against* Salmasius.
IV. H. Grotius *De Jure Belli*.
V. Mr. Hunton's *Treatise of Monarchy*.
VI. *Another Treatise of Monarchy*, by a
nameless Author.

Arist. Pol. Lib. 4.

Ἡ πρώτη πολιτεία ἐν τοῖς Ἑλλησιν ἐρρέτο μὲν τὰς
βασιλείαις ἐκ τῶν πολεμούντων.



L O N D O N,
Printed in the Year MDCLXXIX.

THE
ANARCHY
OF A
LIMITED
OR MIXED
Monarchy.

OR,

A Succinct Examination of the Fundamentals of *Monarchy*, both in this and other Kingdoms, as well about the Right of Power in Kings, as of the Original or Natural Liberty of the People.

A Question never yet Disputed, though most necessary in these Times.

Lucan. Lib. 3.

LIBERTAS (——) Populi quem Regna coercent
Libertate Perit :——

—— Neque enim Libertas gratior ulla est
Quàm Domino servire bono——

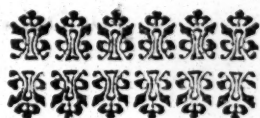
Claudian.

L O N D O N,
Printed in the Year MDCLXXIX.

A N
ADVERTISEMENT
TO THE
Jury-Men
O F
E N G L A N D,
TOUCHING
W I T C H E S.

Together with a Difference between

An { ENGLISH }
AND { Witch.
HEBREW }



L O N D O N,
Printed in the Year MDCLXXIX.



The Argument.

A *Presentment of divers Statutes, Records, and other Precedents, explaining the Writs of Summons to Parliament: shewing,*

I. That the Commons by their Writ are onely to Perform and Consent to the Ordinances of Parliaments

II. That the Lords or Common Council by their Writ are only to Treat, and give Counsel in Parliament.

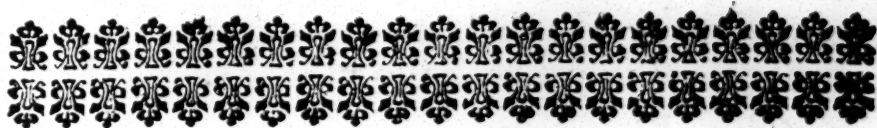
III. That the King Himself only Ordains and makes Laws, and is Supreme Judge in Parliament.

With the Suffrages of

Hen. de Braſton.
Jo. Britton.
Tho. Egerton.
Edw. Coke.
Walter Raleigh
Rob. Cotton.

Hen. Spelman.
Jo. Glanvil.
Will. Lambard.
Rich. Crompton
Will. Cambden, and
Jo. Selden.

THE



THE
Free-holders
GRAND-INQUEST

Touching

Our Sovereign Lord the *King*,
and His *Parliament*.

EVery Free-holder that hath a Voice in the Election of Knights, Citizens or Burgeses for the Parliament, ought to know with what Power he trusts those whom the chooseth, because such Trust is the Foundation of the Power of the House of Commons.

A Writ from the King to the Sheriff of the County, is that which gives Authority and Commission for the Free-holders to make their Election at the next County-Court-day after the Receipt of the Writ; and in the Writ there is also expressed the Duty and Power of the Knights, Citizens and Burgeses that are there elected.

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The means to know what Trust, or Authority the Country or Free-holders confer, or bestow by their Election, is in this, as in other like Cases, to have an eye to the words of the Commission, or Writ it self: thereby it may be seen whether that which the House of Commons doth act be within the Limit of their Commission: greater or other Trust than is comprised in the Body of the Writ, the Free-holders do not, or cannot give if they obey the Writ: the Writ being Latine, and not extant in English, few Free-holders understand it, and fewer observe it; I have rendred it in Latine and English.

Rex Vicecomiti salut'. &c.

*Q*uia de Advisamento & Assensu Concilii nostri pro quibusdam arduis & urgentibus Negotiis, Nos, statum, & defensionem regni nostri Angliæ, & Ecclesiæ Anglicanæ concernen', quoddam Parliamentum nostrum apud Civitatem nostram West. duodecimo die Novembris prox. futur' teneri ordinavimus, & ibid. cum Prælati Magnatibus & Proceribus dicti regni nostri colloquium habere & tract: Tibi præcipimus firmiter injungentes quod facta proclam. in prox. comitat' tuo post receptionem hujus brevis nostri tenend' die & loco prædict. duos milit' gladiis cinct' magis idoneos & discretos comit' prædicti, & de qualib. civitate com' illius duos Cives, & de quolibet Burgo duos Burgenses de discretior' & magis sufficientibus libere & indifferenter per illos qui proclam' hujusmodi interfuerint juxta formam statutorum inde edit' & provis' eligi, & nomina eorundum milit', civium & Burgensium, sic electorum in quibusdam indentur' inter te & illos qui hujusmodi election' interfuerint, inde conficiend'

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end' sive hujusmodi electi presentes fuerint vel absentes, inferi : eosque ad dict' diem & locum venire fac'. Ita quod iidem milites plenam & sufficientem potestatem pro se & communitate comit' predicti, ac dict' Cives & Burgenses pro se & communitat' Civitatum & Burgorum predictorum divisim ab ipsis habeant, ad faciendum & consentiendum his quæ tunc ibid' de communi Consilio dicti reg. nostri (favente Deo) contigerint ordinari super negotiis ante dictis : Ita quod pro defectu potestatis hujusmodi, seu propter improvidam electionem milit' civium aut Burgensium predictorum, dicta negotia infecta non remaneant quovismodo. Nolumus autem quod tu nec aliquis alius vic' dicti reg. nostri aliququaliter sit electus. Et electionem illam in pleno comitatu factam, distincte & aperte sub sigillo tuo & sigillis eorum qui electioni illi interfuerint, nobis in cancellar' nostram ad dict' diem & locum certifies indilate, remittens nobis alteram partem indenturarum predictarum presentibus consui' una cum hoc breve. Teste meipso apud Westmon.

The King to the Sheriff of

Greeting.

WHereas by the Advice and Consent of our
 ' Councel, for certain difficult and urgent
 ' Busineses concerning Us, the State and Defence of
 ' our Kingdom of England, and the English Church :
 ' We have ordained a certain Parliament of ours, to
 ' be held at Our City of the day
 ' of next ensuing, and there to have
 ' Conference, and to treat with the Prelates, Great
 ' men and Peers of our said Kingdom. We com-
 ' mand and straitly enjoyn you, that making Procla-
 ' mation at the next County-Court after the Re-
 ' ceipt of this our Writ, to be holden the day, and
B 2
place

place aforesaid : You cause two Knights, girt with
Swords, the most fit, and discreet of the County
aforesaid : and of every City of that County two
Citizens ; of every Borough, two Burgeses of the
discreeter and most sufficient ; to be freely, and in-
differently chosen by them who shall be present at
such Proclamation, according to the Tenor of the
Statutes in that case made and provided : and the
Names of the said Knights, Citizens and Burgeses
so chosen, to be inserted in certain Indentures to be
then made between you, and those that shall be pre-
sent at such Election, whether the Parties so elected
be present, or absent : and shall make them to come
at the said day, and Place : so that the said Knights
for themselves, and for the County aforesaid, and
the said Citizens, and Burgeses for themselves, and
the Commonalty of the aforesaid Cities, and Bo-
roughs, may have severally from them, full and
sufficient Power to *Perform*, and to *Consent* to
those things which then by the Favour of God
shall there happen to be ordained by the *Common-
Council* of our said Kingdom, concerning the Busi-
nesses aforesaid : So that the Business may not by
any means remain undone for want of such Power,
or by reason of the improvident Election of the
aforesaid Knights, Citizens, and Burgeses. But
We will not in any case you or any other Sheriff
of Our said Kingdom shall be elected ; And at
the Day and Place aforesaid, the said Election
made in the full County-Court, you shall certifie
without Delay to Us in our Chancery under your
Seal, and the Seals of them which shall be present
at that Election, sending back unto Us the other
part of the Indenture aforesaid affiled to these Pre-
sents,

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'sents, together with this Writ. *Witness Our Self at Westminster.*

By this Writ we do not find that the Commons are called to be any part of the *Common Council* of the Kingdom, or of the *Supream Court of Judicature*, or to have any part of the *Legislative Power*, or to Consult *de arduis regni negotiis*, of the difficult Bussinesses of the Kingdom. The Writ only sayes, the King would have *Conference*, and *Treat* with the *Prelates*, *Great men*, and *Peers*: but not a word of *Treating* or *Conference* with the Commons; The House of Commons which doth not minister an Oath, nor fine, nor imprison any, but their own Members (and that but of late in some Cases) cannot properly be said to be a Court at all; much less to be a part of the Supream Court, or highest Judicature of the Kingdom: The constant Custom, even to this day, for the Members of the House of Commons to stand bare, with their Hats in their Hands in the Presence of the Lords, while the Lords sit covered at all Conferences, is a visible argument, that the Lords and Commons are not fellow Commissioners, or fellow Counsellors of the Kingdom.

The Duty of Knights, Citizens, and Burgeses, mentioned in the Writ, is only *ad Faciendum*, & *Consentiendum*, to *Perform* and to *Consent* to such things as should be ordained by the *Common Council* of the Kingdom; there is not so much mentioned in the Writ as a Power in the Commons to dissent. When a man is bound to appear in a Court of Justice, the words are, *ad Faciendum & recipiendum quod ei per curiam injungetur*: which shews, that this word *Faciendum* is used as a Term in Law to signifie to give Obedience: For this, we meet with a Precedent

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even as ancient as the Parliament-Writ it self, and it is concerning Proceedings in Parliament. 33. Ed. 1. *Dominus Rex mandavit vicecom' quod &c. summon' Nicolaum de Segrave, & ex parte Domini regis firmiter ei injungeret, quod esset coram Domino Rege in proximo Parl. &c. ad audiendum voluntatem ipsius Domini Regis &c. Et ad Faciendum & recipiendum ulterius quod curia Domini Regis consideraret in Præmissis:* "Our Lord
"the King commands the Sheriff to summon Nicho-
"las Segrave to appear before the Lord our King in the
"next Parliament to hear the Will of the Lord our
"King himself, and to Perform and receive what the
"Kings Court shall further consider of the Premises.

Sir Ed. Coke to prove the Clergy hath no Voice in Parliament; saith, that by the Words of their Writ *their Consent was only to such things as were ordained by the Common Council of the Realm.* If this argument of his be good, it will deny also Voices to the Commons in Parliament, for in their Writ are the self-same words, *viz. to consent to such things as were ordained by the Common Council of the Kingdom.* Sir Edw. Coke concludes, that the *Procuratores Cleri*, have many times appeared in Parliament, as *Spiritual Assistants*, to Consider, Consult, and to Consent; but never had voice there; how they could consult, and Consent without Voices he doth not shew: Though the Clergy (as he saith) oft appeared in Parliament, yet was it only *ad consentiendum*, as I take it, and not *ad faciendum*, for the Word *Faciendum* is omitted in their Writ; the cause, as I conceive is, the Clergy, though they were to assent, yet by reason of *Clerical Exemptions*, they were not required to Perform all the Ordinances or Acts of Parliament.

But some may think, though the Writ doth not expresse a Calling of the Knights, Citizens, and
Bur.

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Burgesſes to be part of the *Common Council of the Kingdom*; yet it ſuppoſeth it a thing granted, and not to be queſtioned, but that they are a part of the *Common Council*.

Indeed if their Writ had not mentioned the Calling of Prelates, Great men, and Peers to Council, there might have been a little better colour for ſuch a Suppoſition: but the Truth is, ſuch a Suppoſition doth make the Writ it ſelf vain and idle; for it is a ſenſeleſs thing to bid men aſſent to that which they have already ordained: ſince ordaining is an Aſſenting, and more than an Aſſenting.

For clearing the meaning and ſenſe of the Writ, and Satisfaction of ſuch as think it impoſſible but that the Commons of *England* have alwayes been a part of the *Common Council of the Kingdom*, I ſhall inſiſt upon theſe Points. 1. That anciently the *Barons of England were the Common Council of the Kingdom*. 2. That until the time of *Hen. 1.* the Commons were not called to Parliament. 3. Though the Commons were called by *Hen. 1.* yet they were not conſtantly called, nor yet regularly elected by Writ until *Hen. 3.* time.

For the firſt point *M. Cambden* in his *Britania*, doth teach us, that *in the time of the Engliſh Saxons, and in the enſuing Age, a Parliament was called, Commune concilium*, which was (ſaith he) *Præſentia Regis, Prælatorum, Procerumque collectorum*, the Preſence of the King, Prelates and Peers aſſembled; No mention of the Commons: the Prelates and Peers were all Barons.

The Author of the Chronicle of the Church of *Lichfield*, cited by *M. Selden*,
*ſaith, Poſtquam Rex Edvardus, &c. Concilio Baro-
num Angliæ, &c. After King Edward was King;
by the Council of the Barons of England he revived a*

Law which had layen asleep threescore and seven years; and this Law was called the Law of St. Edward the King.

In the same Chronicle it is said, that *Will.* the Conquerour *anno regni sui quarto apud Londin'*, had *Concilium Baronum Suorum*, a Councel of his Barons. And of this Parliament it is, that his Son *Hen. 1.* speaks, saying, *I restore you the Laws of King Edward the Confessor, with those amendments wherewith my Father amended them by the Councel of his Barons.*

In the fifth year, as *M. Selden* thinks, of the Conquerour, was a Parliament or *Principum conventus*, an Assembly of Earls and Barons at *Pinenden Heath* in *Kent*, in the Cause between *Lanfranke* the Arch-bishop of *Canterbury*, and *Odo* Earl of *Kent*. The King gave Commission to *Godfrid*, then Bishop of *Constance* in *Normandy*, to represent His own Person for Hearing the Controversie (as saith *M. Lambard*;) and caused *Egelrick* the Bishop of *Chichester* (an aged man, singularly commended for Skill in the Laws and Customes of the Realm) to be brought thither in a Wagon for his Assistance in Councel: Com-manded *Haymo* the Sheriff of *Kent* to summon the whole County to give in Evidence: three whole dayes spent in Debate: in the End *Lanfranke* and the Bishop of *Rocheſter* were restored to the Possession of *Detling* and other Lands which *Odo* hath withholden.

21. Ed. 3. fol. 60. There is mention of a Parliament held under the same King *William* the Conquerour, wherein all the Bishops of the Land, Earls and Barons, made an Ordinance touching the Exemption of the Abby of *Bury* from the Bishops of *Norwich*.

In the tenth year of the Conquerour: *Episcopi, Comites, & Barones regni regia potestate ad universalem Syno-*

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Synodum pro causis audiendis & tractandis convocati,
saith the Book of *Westminster*.

In the 2 year of *William 2.* there was a Parliament
de cunctis regni Principibus; another which had *Selden.*
quosq; regni proceres: All the Peers of the Kingdom.

In the seventh year was a Parliament at *Rocking-*
ham-Castle in Northampton-shire. *Episcopis, Abba-*
tibus cunctique regni Principibus una coeuntibus.

A year or two after, the same King, *de statu reg-*
ni acturus, &c. called thither, by the Command *Selden.*
of his Writ, the Bishops, Abbots, and all the
Peers of the Kingdom.

At the Coronation of *Hen. 1.* All the People of
the Kingdom of England were called, and *Selden.*
Laws were then made; but it was *Per Com-*
mune Concilium Baronum meorum, by the Common
Council of my Barons.

In his third year, the Peers of the Kingdom were
called without any mention of the Com-
mons: and another a while after, *consensu Co-* *Selden.*
mitum & Baronum, by the consent of Earls and Barons.

Florentius Wigoriensis saith, these are Statutes which
Anselme and all the other Bishops in the Presence of
King Henry, by the assent of his Barons ordained: and
in his tenth year, of Earls and Peers; and in his 23.
of Earls and Barons. In the year following the
same King held a Parliament, or great Council with
His Barons Spiritual and Temporal.

King *Hen. 2.* in his tenth year had a great Coun-
cel or Parliament at *Clarendon*, which was an Assem-
bly of Prelates and Peers.

22. *Hen. 2.* saith *Hovenden*, was a great Coun-
cel at *Nottingham*, and by the Common Council of
the Archbishops, Bishops, Earls and Barons, the King-
dom

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dom was divided into six parts. And again, *Hovenden* faith, that the same King at *Windsor* (*apud Windesbores*) *Communi Concilio* of Bishops, Earls, and Barons, divided England into four Parts. And in his 21 year a Parliament at *Windsor* of Bishops, Earls and Barons. And another of like Persons at *Northampton*.

King *Richard 1.* had a Parliament at *Nottingham*, in his fifth year, of Bishops, Earls, and Barons: This Parliament lasted but four days, yet much was done in it: the first day the King disseiseth *Gerard de Canvil* of the Sherifwick of *Lincoln*, and *Hugh Bardolph* of the Castle and Sherifwick of *York*. The second day he required judgment against his Brother *John*, who was afterwards King; and *Hugh de Novant* Bishop of *Coventry*. The third day was granted to the King of every Plow-land in *England* 2 s. He required also the third part of the Service of every Knights Fee for his Attendance into *Normandy*, and all the Wooll that year of the Monks *Cisteaux*, which, for that it was grievous, and unsupportable, they fine for Money. The last day was for Hearing of Grievances: and so the Parliament brake up; And the same year held another at *Northampton* of the Nobles of the Realm.

King *John*, in his fifth year, *He and his Great men* met, *Rex & Magnates convenerunt*: and the *Selden*. Roll of that year hath *Commune Concilium Baronum Meorum*, the Common Council of my Barons at *Winchester*.

In the sixth year of King *Henry 3.* the Nobles granted to the King, of every Knights Fee, two Marks in Silver.

In the seventh year he had a Parliament at London, an *Assembly of Barons*. In his thirteenth year an *Assembly of the Lords at Westminster*. In his fifteenth year of Nobles both *Spiritual and Temporal*.

M. Par. saith that 20. H. 3. *Congregati sunt Mag-nates ad colloquium de negotiis regni tractaturi*, the Great men were called to confer and treat of the Business of the Kingdom. And at Merton, Our Lord the King granted by the Consent of his Great men, That hereafter Usury should not run against a Ward from the Death of his Ancestor.

21. Hen. 3. The King sent his Royal Writs, commanding all belonging to His Kingdom, that is to say, Arch-bishops, Bishops, Abbots and Priors installed, Earls and Barons, that they should all meet at London, to treat of the Kings Business touching the whole Kingdom: and at the day prefixed, the whole multitude of the Nobles of the Kingdom met at London, saith Mat. Westminster.

In his 21 year, At the Request, and by the Councel of the Lords, the Charters were confirmed.

22. Hen. 3. At Winchester the King sent his Royal Writs to Arch-bishops, Bishops, Priors, Earls and Barons, to treat of Business concerning the whole Kingdom.

32. Hen. 3. The King commanded all the Nobility of the whole Kingdom to be called to treat of the State of His Kingdom. Mat. Westm^r.

49. Hen. 3. The King had a Treaty at Oxford with the Peers of the Kingdom. M. Westminster.

At a Parliament at Marlborow 55. Hen. 3. Statutes were made by the Assent of Earls and Barons.

Here

Here the Place of *Brañton*, Chief Justice in this Kings time, is worth the observing; and the rather for that it is much insisted on of late, to make for Parliaments being above the King. The words in *Brañton* are, *The King hath a Superiour, God; also the Law by which he is made King; also his Court, viz. the Earls and Barons.* The Court that was said in those days to be above the King was a Court of *Earls and Barons*, not a Word of the Commons, or the representative Body of the Kingdom being any part of the Superiour Court. Now for the true Sense of *Brañtons* words, how the Law, and the Court of *Earls and Barons*, are the Kings Superiours; they must of Necessity be understood to be Superiours, so far only as to advise, and direct the King out of his own Grace and Good Will only: which appears plainly by the Words of *Brañton* himself, where, speaking of the King, he resolves thus, *Nec potest ei necessitatem aliquis imponere quod injuriam suam corrigat & emendat, cum superiorem non habeat nisi Deum; & satis ei erit ad pœnam, quod Dominum expectat ultorem.* Nor can any man put a necessity upon Him to correct and amend his Injury unless he will himself, since he hath no Superiour but God; it will be sufficient Punishment for him, to expect the Lord an avenger. Here the same man, who speaking according to some mens Opinion saith, the *Law and Court of Earls and Barons* are superiour to the King; in this place tells us himself, the *King hath no Superiour but God*: the Difference is easily reconciled; according to the Distinction of the School-men the King is free from the Coactive Power of Laws or Councillors: but may be subject to their Directive Power, according to his own Will: that is God can only compell, but the
Law

Law and his Courts may advise Him.

Rot. Parliament. 1 Hen. 4. nu. 79. the Commons expressly affirm, *Judgment in Parliament belongs to the King and Lords.*

These Precedents shew, that from the Conquest untill a great part of *Henry the Third's* Reign (in whose dayes it is thought the Writ for Election of Knights was framed) which is about two hundred years, and above a third part of the time since the Conquest to our dayes, the *Barons* made the *Parliament* or *Common Councel of the Kingdom*: under the name of *Barons*; not only the *Earls*, but the *Bishops* also were Comprehended, for the Conquerour made the Bishops *Barons*. Therefore it is no such great Wonder, that in the Writ, we find the *Lords* only to be the *Counsellours*, and the *Commons* Called only to *perform* and *consent* to the *Ordinances*.

Those there be who seem to believe that under the word *Barons*, anciently the *Lords of Court-Barons* were Comprehended, and that they were Called to Parliament as *Barons*; But if this could be proved to have been at any time true, yet those *Lords of Court-Barons* were not the representative Body of the Commons of *England*, except it can be also proved that the Commons, or Free-holders of the kingdome chose such *Lords of Court-Barons* to be present in Parliament. The *Lords of Manors* came not at first by Election of the People, as *Sir Edw. Coke*, treating of the institution of *Court-Barons*, resolves us in these words: *By the Laws and Ordinances of ancient Kings, and especially of King Alfred, it appeareth, that the first Kings of this Realm had all the Lands of England in Demean; and les grand Manors and Royalties they reserved to themselves,*
and

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and of the remnant they, for the Defence of the Realm, enfeoffed the Barons of the Realm with such Jurisdiction as the Court-Baron now hath. Coke's Institutes, First part, Fol. 58.

Here, by the way, I cannot but note that if the first Kings had all the Lands of England in Demean, as Sir Edward Coke saith they had; And if the first Kings were chosen by the People, (as many think they were) then surely our Forefathers were a very bountiful (if not a prodigal) People, to give all the Lands of the whole Kingdom to their Kings, with Liberty for them to keep what they pleased, and to give the Remainder to their Subjects, clogg'd and cumbred with a Condition to defend the Realm: This is but an ill sign of a limited Monarchy by original Constitution or Contract. But to conclude the former Point, Sir Edward Coke's Opinion is, that *in the ancient Laws, under the name of Barons were comprised all the Nobility.*

This Doctrine of the Barons being the Common Council, doth displease many, and is denied, as tending to the Disparagement of the Commons, and to the Discredit, and Confutation of their Opinion, who teach, that the Commons are assigned Councillors to the King by the People, therefore I will call in Mr. Pryn to help us with his Testimony: He in his Book of Treachery and Disloyalty &c. proves that before the Conquest, by the Laws of Edward the Confessor, cap. 17. *The King by his Oaths was to do Justice by the Council of the Nobles of his Realm.* He also resolves, that the Earls and Barons in Parliament are above the King, and ought to bridle him, when he exorbitates from the Laws. He further tells us, the Peers and Prelates have oft translated the Crown from the right Heir.

1. Ele-

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1. *Electing and Crowning Edward, who was illegitimate; and putting by Ethelred, the right Heir after Edgars decease.*

2. *Electing and Crowning Canutus, a meer Foreigner, in opposition to Edmund the right Heir to King Ethelred.*

3. *Harold and Hardiknute, both elected Kings successively without title; Edmund and Alfred the right Heirs being dispossessed.*

4. *The English Nobility, upon the Death of Harold, enacted that none of the Danish blood should any more reign over them.*

5. *Edgar Etheling, who had best Title, was rejected, and Harold elected and crowned King.*

6. *In the second and third year of Edw. 2. the Peers and Nobles of the Land, seeing themselves contemned, entreated the King to manage the Affairs of the Kingdome by the Council of his Barons. He gave his Assent, and swore to ratifie what the Nobles ordained; and one of their Articles was, that he would thenceforward order all the Affairs of the Kingdom by the Council of his Clergy and Lords.*

7. *William Rufus, finding the greatest part of the Nobles against him, swore to Lanfranke that if they would choose him for King, he would abrogate their overhard Laws.*

8. *The Beginning, saith Mr. Pryn, of the Charter of Hen. 1. is observable; Henry by the Grace of God of England, &c. Know ye, That by the Mercy of God and Common Council of the Barons of the Kingdom, I am Crowned King.*

9. *Maud the Empress, the right Heir, was put by the Crown by the Prelates and Barons, and Stephen, Earl of Mortain, who had no good Title, assembling the Bish-*

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Bishops and Peers, promising the amendment of the Laws according to all their Pleasures and Liking, was by them all proclaimed King.

10. *Lewis of France Crowned King by the Barons, in stead of King John.*

All these Testimonies from Mr. Pryn may satisfie, that anciently the Barons were the *Common Council, or Parliament of England*. And if Mr. Pryn could have found so much Antiquity, and Proof for the Knights, Citizens, and Burgeses, being of the *Common Council*: I make no doubt but we should have heard from him in Capital Characters: but alas! he meets not with so much as these Names in those elder Ages. He dares not say the Barons were assigned by the People, *Councillors to the King*; for he tells us, *every Baron in Parliament doth represent his own Person, and speaketh in behalf of himself alone*; but in the Knights, Citizens, and Burgeses, are represented the Commons of the whole Realm: therefore every one of the Commons hath a greater voice in Parliament than the greatest Earl in England. Nevertheless Master Pryn will be very well content if we will admit and swallow these Parliaments of Barons for the representative Body of the Kingdom; and to that Purpose he cites them, or to no Purpose at all. But to prove the Treachery and Disloyalty of Popish Parliaments, Prelates, and Peers, to their Kings: which is the main Point, that Master Pryn by the Title of his Book is to make good, and to prove.

As to the second Point; which is, That untill the time of *Hen. 1.* the Commons were not called to Parliament: besides, the general Silence of Antiquity which never makes mention of the Commons Coming to Parliament untill that time; our Histories
say

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say, before his time only certain of the Nobility were called to Consultation about the most important affairs of the State: He caused the Commons also to be assembled by Knights, Citizens, and Burgeses of their own Appointment: much to the same Purpose writes Sir *Walter Raleigh*, saying, it is held that the Kings of England had no formal Parliaments till about the 18th year of King Hen. 1. For in his Third year, for the Marriage of his Daughter, the King raised a Tax upon every Hide of Land, by the Advice of His Privy Councel alone. And the Subjects (saith he) soon after this Parliament was established, began to stand upon Terms with their King, and drew from him by strong hand, and their Swords, their Great Charter; it was after the establishment of the Parliament, by colour of it, that they had so great Daring. If any desire to know the cause why Hen. 1. called the People to Parliament, it was upon no very good Occasion, if we believe Sir *Walter Raleigh*; The Grand Charter (saith he) was not originally granted Regally and freely, for King Hen. 1. did but usurp the Kingdom, and therefore the better to assure himself against Robert his elder Brother, he flattered the People with those Charters: yea, King John that confirmed them, had the like Respect: for Arthur D. of Britain was the undoubted Heir of the Crown, upon whom John usurped: so these Charters had their original from Kings, de facto, but not de jure: and then afterwards his Conclusion is, that the Great Charter had first an obscure Birth by Usurpation, and was fostered, and shewed to the World by Rebellion: in brief, the King called the People to Parliament, and granted them *Magna Charta*; that they might confirm to him the Crown.

The third Point consists of two parts; First, that the Commons were not called unto Parliament until

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Hen. 3. dayes, this appears by divers of the Precedents formerly cited, to prove that the *Barons were the Common Councel.* For though *Hen. 1.* called all the People of the Land to His Coronation, and again in the 15. or 18. year of his Reign; yet alwayes he did not so; neither many of those Kings that did succeed him, as appeareth before.

Secondly, for calling the Commons by Writ, I find it acknowledged in a Book, intituled, *The Privilege and Practice of Parliaments*, in these words; *In ancient times after the King had summoned His Parliament, innumerable multitudes of People did make their Access thereunto, pretending that Privilege of Right to belong to them. But King Hen. 3. having Experience of the Mischief, and inconveniences by occasion of such popular Confusion, did take order that none might come to His Parliament but those who were specially summoned.* To this purpose it is observed by Master Selden, that the first Writs we find accompanied with other Circumstances of a Summons to Parliament, as well for the Commons as Lords, is in the 49 of *Hen. 3.* In the like manner Master Cambden speaking of the Dignity of Barons hath these Words: *King Hen. 3. out of a great Multitude which were seditious and turbulent, called the very best by Writ or Summons to Parliament; for he, after many Troubles and Vexations between the King himself, and Simon de Monefort, with other Barons; and after appeased: did decree and ordain, That all those Earls and Barons unto whom the King himself vouchsafed to direct His Writs of Summons should come to his Parliament, and no others: but that which he began a little before his Death, Edward 1. and his Successours constantly observed and continued.* The said prudent King Edward
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Summoned always those of ancient Families, that were most wise, to His Parliament; and omitted their Sons after their Death, if they were not answerable to their Parents in Understanding. Also Master Camb- *Cambden.*
den in another place saith, that in the time of Edw. 1. select men for Wisdom and Worth among the Gentry were called to Parliament, and their Posterity omitted if they were defective therein.

As the power of sending Writs of Summons for Elections, was first exercised by Hen. 3. so succeeding Kings did regulate the Elections upon such Writs, as doth appear by several Statutes, which all speak in the Name and Power of the Kings themselves; for such was the Language of our Fore-fathers.

In 5 Ric. 2. c. 4. these be the words, *The King Willeth and Commandeth all Persons which shall have Summons to come to Parliament; and every Person that doth absent himself (except he may reasonably and honestly excuse him to Our Lord the King) shall be amerced, and otherwise punished.*

7 Hen. 4. c. 15. *Our Lord the King, at the grievous complaint of his Commons, of the undue Election of the Knights of Counties, sometimes made of affection of Sheriffs, and otherwise against the Form of the Writs, to the great slander of the Counties, &c. Our Lord the King, willing therein to provide Remedy, by the Assent of the Lords and Commons, Hath Ordained, That Election shall be made in the full County-Court, and that all that be there present, as well Suitors as others, shall proceed to the Election freely, notwithstanding any Request, or Command to the contrary.*

11 Hen. 4. c. 1. *Our Lord the King Ordained, that a Sheriff that maketh an undue Return, &c. shall incur the Penalty of 100 l. to be paid to Our Lord the King.*

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1 H. 5. c. 1. *Our Lord the King, by the Advice and Assent of the Lords, and the special Instance and Request of the Commons, Ordained, that the Knights of the Shire be not chosen, unless they be resiant within the Shire the day of the date of the Writ: and that Citizens and Burgeses be resiant, dwelling, and free in the the same Cities and Burroughs, and no others, in any wise.*

6 Hen. 6. c. 4. *Our Lord the King, willing to provide remedy for Knights chosen for Parliament, and Sheriffs, Hath Ordained, that they shall have their Answer, and traverse to Inquest of Office found against them.*

8 Hen. 6. c. 7. *Whereas Elections of Knights have been made by great Out-rages, and excessive number of People, of which most part was of People of no value, whereof every of them pretend a Voice equivalent to Worthy Knights, and Esquires; whereby Man-slaughters, Riots, and Divisions among Gentlemen shall likely be: Our Lord the King hath Ordained, That Knights of Shires be chosen by People dwelling in the Counties, every of them having Lands or Tenements to the value of 2 l. the year at the least, and that he that shall be chosen, shall be dwelling and resiant within the Counties.*

10. H. 6. *Our Lord the King ordained, that Knights be chosen by People dwelling, and having 2 l. by the year within the same County.*

11 H. 6. c. 11. *The King, willing to provide for the Ease of them that come to the Parliaments and Councils of the King by his Commandment, hath ordained, that if any Assault or Fray be made on them that come to Parliament, or other Council of the King; the Party which made any such Affray or Assault, shall pay double Damages, and make Fine and Ransom at the Kings Will.*

23. H. 6.

23. H. 6. c. 15. The King considering the Statutes of 1 H. 5. c. 1. & 8. Hen. 6. c. 7. and the Defaults of Sheriffs in returning Knights, Citizens, and Burgesſes, ordained ;

1. That the ſaid Statutes ſhould be duely kept.
2. That the Sheriffs ſhall deliver Precepts to Maiors, and Bayliffs to choſe Citizens and Burgesſes.
3. The Penalty of 100 l. for a Sheriff making an untrue Return concerning the election of Knights, Citizens and Burgesſes.

4. The Penalty of 40 l. for Maiors or Bayliffs, making untrue Returns.

5. Due Election of Knights muſt be in the full County-Court, between the Hours of Eight and Eleven before noon.

6. The Party muſt begin his Suit within 3 Moneths after the Parliament began.

7. Knights of the Shire ſhall be notable Knights of the County, or ſuch notable Eſquires, or Gentlemen born of the ſaid Counties as ſhall be able to be Knights, and no man to be ſuch Knight which ſtandeth in the Degree of a Yeoman, and under.

The laſt thing I obſerve in the Writ for Election of Members for Parliament, is, That by the expreſs words of the Writ, Citizens and Burgesſes for the Parliament were eligible at the County-Court as well as Knights of the Shire; and that not only Free-holders, but all others, whoſoever were preſent at the County-Court, had Voices in ſuch Elections: ſee the Stat. 7. Hen. 4. cap. 15.

I have the longer inſiſted on the Examination of the Writ, being the Power, and Actions of the Houſe of Commons are principally juſtified by the *Truſt* which the Free-holders commit unto them by virtue of this Writ.

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I would not be understood to determine what Power the House of Commons doth, or may exercise if the King please: I confine my self only to the Power in the Writ. I am not ignorant that King *Hen. 7.* in the Cause of the Duke of Britain, and King *James* in the-Business of the *Palatinate* asked the Council of the House of Commons; and not only the House of Commons, but every Subject in particular by Duty and Allegiance, is bound to give his best Advice to his Sovereign, when he is thought worthy to have his Council asked.

13. *Edw. 3. nu. 10.* All the Merchants of England were summoned by Writ to appear at Westminster in proper Person, to confer upon great business concerning the Kings Honour, the Salvation of the Realm, and of themselves.

In Passages of publick Council it is observable (saith Sir Rob. Cotton) that in ancient times the Kings of England did entertain the Commons with Cotton. weighty Causes, thereby to apt and bind them to a readines of Charge; and the Commons to shun Expence have warily avoided to give Advice.

13. *Edw. 3.* The Lords and Commons were called to consult how the domestick Quiet may be preserved, the Marches of Scotland defended, and the Sea secured from Enemies. The Peers and Commons having apart consulted, the Commons desired Not to be charged to Council of things of which they had no Cognisance; *de queux ils n'ont pas de Cognisance.*

21. *Edw. 3.* Justice Thorp declaring to the Peers and Commons that the French War began by their Advice: the Truce after by their Assent accepted, and now ended: the Kings Pleasure was to have their

their Counsel in the Prosecution: the Commons, being commanded to assemble themselves, and when they were agreed, to give notice to the King, and the Lords of the Council; after four days Consultation, *Humbly desire of the King that he would be advised therein by the Lords and others of more Experience than themselves in such Affairs.*

6. Ric. 2. The Parliament was called to consult whether the King should go in Person to rescue Gaunt, or send an Army. The Commons, after two dayes Debate, crave a Conference with the Lords, and Sir Thomas Puckering (their Speaker) protests, that *Councils for War did aptly belong to the King and His Lords*; yet since the Commons were commanded to give their Advice, *they humbly wished a Voyage by the King.*

7. Ric. 2. At the second Session, the Commons are willed to Advise upon View of Articles of Peace with the French; whether War or such Amity should be accepted; *they modestly excuse themselves, as too weak to Counsel in so weighty Causes.* But charged again, as they did tender their Honour and the Right of the King; they make their Answer, giving their Opinions, *rather for Peace, than War.*

For fuller Manifestation of what hath been said touching the Calling, Election, and Power of the Commons in Parliament, it is behooful to observe some Points delivered by Sir Edw. Coke in his Treatise of the Jurisdiction of Parliaments; where,

First, he fairly begins, and lays his Foundation, that *the High Court of Parliament consisteth of the Kings Majesty sitting there, and of the three Estates;*

1. *The Lords Spiritual.*

2. *The Lords Temporal.*

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3. *And*

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3. *And the Commons.*

Hence it is to be gathered, that truly and properly it cannot be called the *High Court of Parliament*, but whilst the King is sitting there in Person: so that the Question now a-days, whether the *Parliament* be above the King, is either false or idle: false, if you exclude, and idle if you include the King's Person in the word *Parliament*: The case truly put, and as it is meant, is, whether the three Estates (or which is all one, the Lords and Commons) assembled in Parliament be above the King: and not whether the King with the three Estates be above the King: It appears also that they are much mistaken, who reckon the King one of the three Estates as Mr. Pryn, pag. 20. and many others do; for the three Estates make the Body, and the King is *Caput, Principium, & finis Parliamentor'*, as confesseth Sir Edw. Coke.

Secondly, Sir Edw. Coke delivers, That certain it is, both Houses at first sate together, and that it appears in Edward the Third's time, the Lords and Commons sate together, and the Commons had no continual Speaker. If he mean, the Lords and Commons did sit, and Vote together in one Body; few there be that will believe it, because the Commons never were wont to lose, or forego any of their Liberties, or Privileges; and for them to stand now with their Hats in their hands (which is no Magistratical Posture) there, where they were wont to sit and Vote, is an alteration not imaginable to be indured by the Commons. It may be, in former times, when the Commons had no constant Speaker, they were oft, and perhaps for the most part, in the same Chamber, and in the presence of the Lords, to hear the Debates and Con-
ful-

sultations of the *Great Council*, but not to sit, and Vote with them: for when the Commons were to Advise among themselves, the Chapter-house of the *Abby of Westminster* was oft-times their place to meet in, before they had a settled House, and their meetings not being very frequent, may be the reason, I conceive, why the name of the House of Commons is not of such great Antiquity, or taken notice of; but the House of Lords was only called the Parliament-House: and the Treatise called, *Modus tenendi Parliamentum*, speaks of the *Parliament* as but of one House only. The House, where now the Commons sit in *Westminster*, is but of late Use, or Institution: for in *Edward the Sixth's* dayes it was a Chappel of the Colledge of Saint *Stow.* *Stephen*, and had a Dean, Secular Canons and Chorists, who were the Kings Quire at his Palace at *Westminster*, and at the dissolution were translated to the Kings Chappel at *White-hall*.

Also I read, that *Westminster-hall* being out of Repair, Ric. 2. caused a large House to be builded betwixt the Clock-tower, and the Gate of the great old Hall in the midst of the Palace Court: the House was long and large, made of Timber, covered with Tiles, open on both sides, that all might see and hear what was both said and done: four thousand Archers of *Cheshire*, which were the Kings own Guard, attended on that House, and had *bouche a Court*, and 6 d. by the day.

Thirdly, he saith, *The Commons are to chuse their Speaker, but seeing after their Choice the King may refuse him, the Use is (as in the conge d'ellire of a Bishop) that the King doth name a Discreet, Learned man whom the Commons Elect: when the Commons have cho-*

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chosen, the King may allow of his Excuse, and Disallow him, as Sir John Popham was, (saith his Margin.)

Fourthly, he informs us, That the first day of the Parliament four Justices assistants, and two Civilians, (Masters of the Chancery) are appointed Receivers of Petitions, which are to be delivered within six dayes following: and six of the Nobility, and two Bishops, calling to them the Kings Learned Councel, when need should be, to be Tryers of the said Petitions, whether they were reasonable, good, and necessary to be offered and propounded to the Lords. He doth not say, that any of the Commons were either Receivers, or Tryers of Petitions: nor that the Petitions were to be propounded to Them, but to the Lords.

Fifthly, he teacheth us, that a Knight, Citizen, or Burgess, cannot make a Proxy, because he is Elected, and Trusted by multitudes of People: here a Question may be, whether a Committee, if it be Trusted to act any thing, be not a Proxy? since he saith, the High Power of Parliament to be committed to a few, is holden to be against the Dignity of Parliaments; and that no such Commission ought to be granted.

Sixthly, he saith, The King cannot take notice of any thing said, or done in the House of Commons, but by the Report of the House. Surely, if the Commons sate with the Lords, and the King were present, He might take notice of what was done in His Presence. And I read in *Vowel*, that the old Usage was, that all the Degrees of Parliament sate together, and every man that had there to speak, did it openly, before the King and his whole Parliament.

In the 35 Eliz. there was a Report, that the Commons were against the Subsidies, which was told
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the Queen : whereupon, Sir Henry Knivet said, it should be a thing answerable at the Bar for any man to report any thing of Speeches, or Matters done in the House. Sir John Wolley liked the Motion of Secrecy; except only the Queen, from whom, he said, there is no reason to keep any thing : And Sir Robert Cecil did allow, that the Council of the House should be secretly kept, and nothing reported in *malam partem*. But if the meaning be, that they might not report any thing done here to the Queen, he was altogether against it.

Seventhly, he voucheth an *Enditement* or *Information* in the Kings Bench against 39 of the Commons, for departing without License from Parliament, contrary to the Kings Inhibition: whereof six submitted to their Fines, and Edmund Ployden pleaded, he remained continually from the beginning to the end of the Parliament: Note, he did not plead to the Jurisdiction of the Court of Kings Bench, but pleaded his constant Attendance in Parliament, which was an Acknowledgment, and submitting to the Jurisdiction of that Court : and had been an unpardonable betraying of the Privileges of Parliament by so learned a Lawyer, if his Case ought only to be tryed in Parliament.

Eighthly, he resolves, that the House of Lords in their House have Power of Judicature, and the Commons in their House : and both Houses together. He brings Records to prove the Power of Judicature of both Houses together, but not of either of them by it self. He cites the 33 *Edm. 1.* for the Judicature of both Houses together : where *Nicholas de Segrave* was adjudged *per Prælatos, Comites, & Barones, & alios de Concilio*, by the Prelates, Earls and Barons, and others of the Council. Here is no mention of the

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the Judgment of the Commons. *Others of the Council*, may mean, the Kings Privy Council, or his Council Learned in the Laws, which are called by their Writs to give Counsell; but so are not the Commons. The Judgment it self saith, "*Nicholas de Segrave* confessed his fault in Parliament, and submitted himself to the Kings Will: thereupon the King, willing to have the Advice of the Earls Barons, Great men, and others of his Council, enjoined them by the Homage, Fealty, and Allegiance which they owed, that they should faithfully counsel Him what Punishment should be inflicted for such a Fact: who all, advising diligently, say, That such a Fact deserves loss of Life and Members. Thus the Lords (we see) did but Advise the King what Judgment to give against him that deserted the Kings Camp to fight a Duel in *France*.

Ninthly, he saith, *Of later times, see divers notable Judgments at the Prosecution of the Commons by the Lords*: where the Commons were Prosecutors, they were no Judges, but (as he termes them) *general Inquisitors*, or the *Grand Inquest of the Kingdom*. The Judgments he cites are but in King *James* his dayes, and no elder.

Tenthly, also he tells us, of the *Judicature in the House of Commons alone*; his most ancient precedent is but in *Queen Elizabeths* Reign, of one *Tho. Long*, who gave the *Maior of Westbury* 10 l. to be elected *Burgefs*.

Eleventhly, he hath a Section, entitled, *The House of Commons (to many Purposes) a distinct Court*: and saith, *Nota, the House of Commons to many Purposes, a distinct Court*: of those many Purposes he tells but one, that is, *it uses to adjourn it self*. Commissioners that
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be but to examine Witnesses, may Adjourn themselves, yet are no Court.

Twelfthly, he handles the *Privileges of Parliament*, where the great Wonder is, that this great Master of the Law, who hath been oft a Parliament-man, could find no other, nor more Privileges of Parliament but one, and that is, *freedom from Arrests*: which, he saith, holds, unless in three cases, *Treason, Felony, and the Peace*. And for this freedom from Arrests, he cites Antient Precedents for all those in the House of Lords, but he brings not one Precedent at all for the Commons Freedom from Arrests.

It is behooful for a Free-holder to consider what Power is in the House of Peers; for although the Free-holder have no Voice in the Election of the Lords, yet if the Power of that House extend to make Ordinances that bind the Free-holders, it is necessary for him to enquire *what* and *whence* that Power is, and how far it reacheth: The chief Writ of Summons to the Peers was in these words,

CAROLUS Dei Gratia, &c. Reverendissimo in Christo patri G. eadem gratia Archiepiscopo Cantuariensi, totius Angliæ Primati & Metropolitano, salutem. Quia de advisamento & assensu Concilii nostri, pro quibusdam arduis & urgentibus negotiis, Nos & statum & defensionem regni nostri Angliæ, & ecclesiæ Anglicanæ concernentibus, quoddam Parliamentum nostrum apud W. &c. teneri ordinavimus, & ibidem vobiscum, & cum cæteris Prælatiis, Magnatibus & Proceribus dicti regni nostri Angliæ colloquium habere, & tractatum: Vobis in fide, & dilectione quibus nobis tenemini firmiter injungendo

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gendo mandamus, quod consideratis dictorum negotiorum arduitate, & periculis imminentibus, cessante quacunque excusatione dictis die & loco personaliter intersitis, Nobiscum & cum ceteris Prælati, Magnatibus, & Proceribus prædictis, super dictis negotiis tractaturi, vestrumque concilium impensuri, & hoc sicut Nos & Honorem nostram ac saluationem regni prædicti, ac ecclesiæ sanctæ, expeditionemq; dictorum negotiorum diligitis, nullatenus omittatis; Præmonentes Decanum & capitulum ecclesiæ vestræ Cantuariensis, ac Archidiaconos, totumque Clerum vestræ Diocesis, quod idem Decanus & Archidiaconi in propriis personis suis, ac dictum Capitulum per unum, idemque Clerus per duos Procuratores idoneos, plenam & sufficientem potestatem ab ipsis Capitulo & Clero habentes, prædictis die & loco personaliter intersint, ad consentiendum hiis quæ tunc ibidem de Commune Concilio ipsius Regni Nostri, divina favente Clementia, contigerint ordinari. Teste Meipso apud West. &c.

CHARLES by the Grace of God, &c. To the most Reverend Father in Christ *W.* by the same Grace Arch-bishop of Canterbury, Primate and Metropolitan of all *England*, Health. Whereas by the Advice and Assent of our Councel, for certain difficult and urgent Busineses concerning Us, the State, and Defence of Our Kingdom of *England*, and of the English Church: We have Ordained a certain Parliament of Ours to be holden at *W. &c.* and there to have Conference, and to treat with you the Prelats, Great men, and Peers of Our said Kingdom. We straitly Charge and Command, by the Faith and Love by which you are bound to Us, that considering the Difficulties of the Busineses aforesaid, and the imminent Dangers, and setting aside all Excuses,

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cuses, you be personally present at the Day and Place afore said, to treat and give your Counsel concerning the said Busineses: And this, as you love Us and Our Honour, and the Safeguard of the foresaid Kingdom and Church, and the Expedition of the said Busineses, you must no way omit. Forewarning the Dean and Chapter of your Church of *Canterbury*, and the Arch-deacons, and all the Clergy of your Diocese, that the same Dean, and the Arch-deacon in their proper Persons; and the said Chapter by one, and the said Clergy by two fit Proctors, having full and sufficient Power from them the Chapter and Clergy, be personally present at the foresaid Day and Place, to Consent to those things, which then and there shall happen by the favour of God, to be Ordained by the Common Council of our Kingdom. Witness Our Self at *Westm.*

The same Form of Writ *mutatis mutandis*, concluding with, *you must no way omit*. Witness, &c. is to the Temporal Barons: But whereas the Spiritual Barons are required by the Faith and Love; the Temporal are required by their Allegiance or Homage.

The Difference between the two Writs is, *that the Lords are to Treat and to Give Counsel*; the Commons are to *Perform and Consent* to what is ordained.

By this Writ the Lords have a *deliberative* or a *consultive Power to Treat, and give Counsel in difficult Busineses*: and so likewise have the Judges, Barons of the Exchequer, the Kings Council, and the Masters of the Chancery, by their Writs. But over and besides this Power, the Lords do exercise a *decisive*

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or *Judicial* Power, which is not mentioned or found in their Writ.

For the better Understanding of these two different Powers, we must carefully note the distinction between a *Judge* and a *Counsellor* in a Monarchy: the ordinary Duty, or Office of a *Judge* is to give Judgment, and to command in the Place of the King; but the ordinary Duty of a *Counsellor* is to advise the King what he himself shall do, or cause to be done: The *Judge* represents the *Kings Person* in his absence, the *Counsellor* in the *Kings Presence* gives his Advice: *Judges* by their Commission or Institution are limited their Charge and Power, and in such things they may judge, and cause their Judgments to be put in Execution: But *Counsellors* have no Power to command their Consultations to be executed, for that were to take away the Sovereignty from their Prince, who by his Wisdom is to weigh the Advice of his Council, and at liberty to resolve according to the Judgment of the wiser part of his Council, and not always of the greater: In a word, regularly a *Counsellor* hath no Power but in the *Kings Presence*, and a *Judge* no Power but out of his Presence; These two Powers, thus distinguished, have yet such Correspondency, and there is so near Affinity between the Acts of judging, and counselling; that although the ordinary Power of the Judge is to give Judgment: yet by their Oath they are bound in Causes extraordinary, when the King pleaseth to call them, to be his Counsellors; and on the other side, although the proper work of a Counsellor be only to make Report of his Advice to his Sovereign, yet many times for the Ease only, and by the Permission of the King, Counsellors are allowed

to judge, and command in Points wherein ordinarily they know the mind of the Prince; and what they do is the act of the Royal Power it self: for the Council is always presupposed to be united to the Person of the King, and therefore the Decrees of the Council are stiled, *By the King in his Privy Council.*

To apply this Distinction to the House of *Peers*: we find originally they are called as Counsellors to the King, and so have only a *deliberative* Power specified in their Writ, and therefore the Lords do only then properly perform the Duty for which they are called, when they are in the Kings Presence, that *He may have Conference and treat with them*: the very Words of the Writ are, *nobiscum ac cum Prælati, Magnatibus & Proceribus prædictis super dictis negotiis tractaturi vestrumque conciliū impensuri*, with Us and with the Prelates, Great men and Peers to treat and give your counsel: the word *Nobiscum* implieth plainly the Kings Presence. It is a thing in reason most absurd, to make the King assent to the Judgments in Parliament, and allow Him no part in the Consultation; this were to make the King a Subject. Council loseth the name of *Council*, and becomes a Command if it put a Necessity upon the King to follow it: such Imperious Councils, make those that are but Counsellors in name to be Kings in Fact: and Kings themselves to be but Subjects. We read in Sir Robert Cotton, that *towards the end of the Saxons, and the first times of the Norman Kings, Parliaments stood in Custom-grace fixed to Easter, Whitsontide, and Christmas; and that at the Kings Court, or Palace,*

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Parliaments sate in the Presence, or Privy Chamber: from whence he infers, an Improbability to believe the King excluded His own Presence; and unmannerly for Guests to bar Him their Company who gave them their Entertainment. And although now a-days the Parliament sit not in the Court where the Kings household remains, yet still even to this day, to shew that Parliaments are the Kings Guests, the Lord Steward of the Kings Household keeps a standing Table to entertain the Peers during the sitting of Parliament; and he alone, or some from, or under him, as the Treasurer, or Comptroller of the Kings Household takes the Oaths of the Members of the House of Commons the first day of the Parliament.

Sir *Richard Scroop* Steward of the Household of our Sovereign Lord the King, by the Commandment of the Lords sitting in full Parliament in the Great Chamber, put *J. Lord Gomeniz* and *William Weston* to answer severally to Accusations brought against them. *Selden.*

The Necessity of the King's Presence in Parliament, appears by the Desire of Parliaments themselves in former times; and the Practice of it Sir *Robert Cotton* proves by several Precedents: whence he concludes, that in the Consultations of State, and Decisions of private Complaints, it is clear from all times, the King was not only present to advise, but to determine also. Whosoever the King is present, all Power of judging, which is derived from His, ceaseth: The Votes of the Lords may serve for matter of Advice, the final Judgment is only the Kings. Indeed, of late years, Queen *Mary*, and Queen *Elizabeth*, by reason of their Sex, being not so fit for publick Assemblies, have brought it out of Use, by which means it is come

to pass, that many things which were in former times acted by Kings themselves, have of late been left to the Judgment of the *Peers*; who, in Quality of Judges extraordinary, are permitted for the Ease of the King, and in His absence, to determine such matters as are properly brought before the King Himself sitting in Person, attended with *His great Council of Prelates and Peers*. And the Ordinances that are made there, receive their Establishment either from the Kings Presence in Parliament, where his Chair of State is constantly placed; or at least from the Confirmation of Him, who in all Courts, and in all Causes is Supream Judge. All Judgment is by, or under Him; it cannot be without, much less against his Approbation. *The King only and none but He, if He were able, should judge all Causes*; saith *Braeton*, that ancient Chief Justice in *Hen. 3.* time.

An ancient Precedent I meet with cited by Master *Selden*, of a judicial Proceeding in a Criminal Cause of the *Barons* before the Conquest, wherein I observe the *Kings Will* was, that the Lords should be Judges, in the Cause wherein *Himself* was a Party; and He ratified their Proceeding: The case was thus, Earl *Godwin* having had a Trial before the Lords under King *Hardicanute*, touching the Death of *Alfred* (Son to King *Ethelbert*, and Brother to him who was afterward *Edward the Confessor*) had fled out of *England*; and upon his Return, with Hope of *Edward the Confessor's* Favour, he solicited the Lords to intercede for him with the King; who (consulting together) brought *Godwin* with them before the King to obtain his Grace and Favour: But the King presently, as soon as he beheld him, said, *Thou*

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Traytor Godwin, I do appeal thee of the Death of my Brother Alfred, whom thou hast most trayterously slain; Then Godwin excusing it, answered, My Lord the King, may it please your Grace, I neither betrayed nor killed your Brother, whereof I put my self upon the Judgment of your Court: Then the King said, You noble Lords, Earls, and Barons of the Land, who are my Liege men now gathered here together, and have heard My Appeal, and Godwins Answer, I Will that in this Appeal between Us, ye decree right Judgment, and do true Justice. The Earls and Barons treating of this among themselves, were of differing Judgments; some said that Godwin was never bound to the King either by Homage, Service, or Fealty, and therefore could not be his Traytor, and that he had not slain Alfred with his own hands: others said, that neither Earl nor Baron, nor any other Subject of the King could wage his War by Law against the King in his Appeal; but most wholly put himself into the Kings Mercy, and offer competent Amends. Then Leofric Consul of Chester, a good man before God and the World, said, Earl Godwin next to the King, is a man of the best Parentage of all England, and he cannot deny but that by his Counsel Alfred the Kings Brother was slain, therefore for my part I consider, that He and his Son, and all we twelve Earls who are his Friends and Kinsmen, do go humbly before the King, laden with so much Gold and Silver as each of us can carry in our Arms, offering him That for his Offence, and humbly praying for Pardon; And he will pardon the Earl, and taking his Homage and Fealty, will restore him all his Lands. All they in this form lading themselves with Treasure, and coming to the King, did shew

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shew the Manner and Order of their Consideration, to which, *The King not willing to contradict, did ratifie all that they had judged.*

23 Hen. 2. In Lent there was an Assembly of all the Spiritual and Temporal Barons at *Westminster*, for the determination of that great Con-^{Selden.} tention between *Alfonso King of Castile*, and *Sancho King of Navarre*, touching divers Castles, and Territories in *Spain*, which was by compromise submitted to the Judgment of the King of *England*. And the King, consulting with his Bishops, Earls, and Barons, determined it (as he saith) *Himself* in the first Person, in the Exemplification of the Judgement.

2 Of King *John* also, that great Controverſie touching the Barony that *William of Moubay* claimed against *William of Stutvil*, which had depended from the time of King Hen. 2. was ended by the Councel of the Kingdom, and Will of the King: *Concilio regni, & voluntate Regis.*

The Lords in Parliament adjudge *William de Weston* to Death for surrendring *Barwick Castle*; but for that *Our Lord the King* was not informed of ^{Selden.} the manner of the Judgment, the Constable of the Tower, *Allen Buxall*, was commanded safely to keep the said *William* untill he hath other Commandment from our Lord the King. 4 Ric. 2.

Also the Lords adjudged *John Lord of Gomentz* for surrendring the Towns, and Castles of *Ardee*: and for that he was a Gentleman, and ^{Selden.} Bannaret, and had served the late King, he should be beheaded, and for that our Lord the King was not informed of the manner of the Judgment, the Execution thereof shall be respited untill our Lord the

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King shall be informed. It is commanded to the Constable of the Tower, safely to keep the said John, untill he hath other commandement from our Lord the King.

In the case of *Hen. Spencer* Bishop of *Norwich*, 7 Ric. 2. who was accused for complying with the French, and other Failings; the Bishop complained, what was done against him, did not pass by the Assent and Knowledge of the Peers; whereupon it was said in Parliament, that *The cognisance and Punishment of his Offence did, of common Right, and ancient Custom of the Realm of England, solely and wholly belong to Our Lord the King, and no other: Le cognisance & punissement de commune droit & ancienne custome de Royaume de Engleterre, seul & per tout appartenente au Roy nostre Seigneur, & a nul autre.*

In the case of the Lord *de la Ware*, the Judgment of the Lords was, *that he should have place next after the Lord Willoughby of Erisbe*, by consent of all, except the Lord *Windsor*: and the Lord Keeper was required to acquaint Her Majesty with the Determination of the Peers, and to know her Pleasure concerning the same.

The Inference from these Precedents, is, that the Decisive or Judicial Power exercised in the Chamber of Peers, is merely derivative, and subservient to the Supreme Power, which resides in the King, and is grounded solely upon his grace and favour: for howsoever the House of Commons do alledge their Power to be founded on the Principles of Nature, in that they are the Representative Body of the Kingdom (as they say) and so being the whole, may take care, and have power by Nature to preserve themselves: yet the House of Peers do not, nor cannot

not make any such the least Pretence, since there is no reason in Nature, why amongst a company of men who are all equal, some few should be picked out to be exalted above their Fellows, and have power to Govern those who by Nature are their companions. The difference between a *Peer* and a *Commoner*, is not by *Nature*, but by the *grace of the Prince*: who creates Honours, and makes those Honours to be hereditary (whereas he might have given them for life onely, or during pleasure, or good behaviour) and also annexeth to those Honours the Power of having Votes in Parliament, as hereditary Counsellours, furnished with ampler Privileges than the Commons: All these Graces conferred upon the Peers, are so far from being derived from the Law of Nature, that they are contradictory and destructive of that natural equality and freedom of mankind, which many conceive to be the foundation of the Privileges and Liberties of the House of Commons: there is so strong an opposition between the liberties of *Grace* and *Nature*, that it had never been possible for the two Houses of Parliament to have stood together without mortal Enmity, and eternal jarring, had they been raised upon such opposite foundations: But the truth is, the Liberties and Privileges of both Houses have but one, and the self-same foundation, which is nothing else but the meer and sole Grace of Kings.

Thus much may serve to shew the Nature and Original of the *deliberative* and *decisive* Power of the Peers of the Kingdom.

The matter about which the *deliberative* power is conversant, is generally the Consulting and Advising

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sing upon any urgent Business which concerns the King, or Defence of the Kingdom : and more especially sometimes in preparing new Laws ; and this Power is grounded upon the Writ.

The *decisive* Power is exercised in giving Judgment in some difficult Cases ; but for this Power of the *Peers*, I find no Warrant in their Writ.

Whereas the Parliament is styled the *Supreme Court*, it must be understood properly of the King sitting in the House of Peers in Person ; and but improperly of the Lords without him : Every Supreme Court must have the Supreme Power, and the Supreme Power is alwayes Arbitrary ; for that is Arbitrary which hath no Superiour on Earth to controll it. The last Appeal in all Government, must still be to an Arbitrary Power, or else Appeals will be in *Infinitum*, never at an end. The *Legislative* Power is an *Arbitrary* Power, for they are *termini convertibiles*.

The main Question in these our dayes is, *Where this Power Legislative remains ?* or is placed ; upon conference of the Writs of Summons for both Houses, with the Bodies and Titles of our Ancient Acts of Parliament, we shall find the Power of making Laws rests solely in the King. Some affirm, that a part of the *Legislative* Power is in either of the Houses ; but besides invincible reason from the Nature of Monarchy it self, which must have the Supreme Power Alone ; the constant Antient Declaration of this Kingdom is against it. For howsoever of later years in the Titles and Bodies of our Acts of Parliament it be not so particularly expressed who is the Author and Maker of our Laws, yet in almost all our elder Statutes it is precisely expressed, that they are

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are made by the *King Himself*: The general words used of later times, that *Laws are made by Authority of Parliament*, are particularly explained in former Statutes, to mean, *That the King Ordains, the Lords Advise, the Commons Consent*, as by comparing the Writs with the Statutes that expound the Writs, will evidently appear.

Magna Charta begins thus, *Henry by the grace of God, Know ye, that WE of Our Meer and Free Will have given these Liberties.*

In the self-same style runs *Charta de Foresta*, and tells us the Author of it.

The Statute *de Scaccario* 41 H. 3. begins in these words, *The King Commandeth, that all Bailiffs, Sheriffs, and other Officers, &c.* And concerning the Justices of *Chester*, the King Willeth &c. and again, *He Commandeth the Treasurer and Barons of the Exchequer upon their Allegiance.*

The Stat. of *Marlborough*, 52 Hen. 3. goeth thus: *The King hath Made these Acts, Ordinances, and Statutes, which He Willeth to be Observed of all his Subjects, high and low.*

3 *Edw. 1.* The Title of this Statute is, *These are the ACTS of King EDWARD*; and after it follows, *The KING hath Ordained these ACTS*; and in the first Chapter, *The King Forbiddeth and Commandeth, That none do hurt, damage, or grievance to any Religious Man, or Person of the Church*; and in the thirteenth Chapter, *The King prohibiteth that none do Ravish or take away by force, any Maid within age.*

6 *Edw. 1.* It is said, *Our Sovereign Lord the King hath established these Acts, commanding they be observed within this Realm*: and in the fourteenth Chap.

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Chap. the words are, *The King of his special Grace granteth, that the Citizens of London shall recover in an Assise, Damage with the Land.*

The Stat. of *West.* 2. saith, Our Lord the King hath ordained, *that the Will of the Giver be observed :* and in the 3. Chap. Our Lord the King hath ordained, *that a woman after the Death of her Husband shall recover by a Writ of Entry.*

The Stat. of *Quo Warranto* saith, Our Lord the King at His Parliament, of his special Grace, and for Affection which he beareth to his Prelates, Earls, and Barons, and others, hath granted, *that they that have Liberties by Prescription shall enjoy them.*

In the Stat. *de finibus Levatis*, the Kings Words are, *We intending to provide Remedy in our Parliament have ordained, &c.*

28. *Edw.* 1. c. 5. The King Wills, *that the Chancellor, and the Justices of the Bench shall follow Him, so that he may have at all times some neer unto him that be learned in the Laws :* and in Chap. 24. the words are, Our Lord the King, *after full Conference and Debate had with his Earls, Barons, Nobles, and other Great men, by their whole Consent, hath ordained &c.*

The Stat. *de Tallagio* (if any such Statute there be) speaks in the Kings Person, *No Officer of Ours : No Tallage shall be taken by Us ; We Will and Grant.*

1. *Edw.* 2. begins thus, Our Lord the King Wil-
leth and Commandeth.

The Stat. of 9. the same King, saith, Our Lord the King, *by the Assent of the Prelates, Earls, and other great States, hath Ordained.*

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10. Edw. 2. It is provided by our Lord the King and his Justices.

The Stat. of Carlile saith, *We have sent our Command in writing firmly to be observed.*

1. Edw. 3. begins thus, King Edw. 3. at his Parliament at the request of the Commonalty by their Petition before him, and his Council in Parliament, hath granted, &c. and in the 5th Chap. The King willeth, that no man be charged to arm himself otherwise than he was wont.

5. Edw. 3. Our Lord the King, at the Request of his People, hath established these things, which He Wills to be kept.

9. Of the same King there is this Title, Our Lord the King by the Assent &c. and by the Advice of his Council being there, hath ordained, &c.

In his 10 year, it is said, *Because Our Lord King Edw. 3. hath received by the Complaint of the Prelates, Earls, Barons; also at the shewing of the Knights of the Shires, and his Commons by their Petition put in his Parliament, &c. Hath ordained, by the Assent &c. at the Request of the said Knights and Commons, &c.*

The same year in another Parliament you may find, *these be the Articles accorded by Our Lord the King, with the Assent, &c. at the Request of the Knights of the Shires, and the Commons by their Petition put in the said Parliament.*

In the year-Book 22 Edw. 3. 3. pl. 25. It is said, *The King makes the Laws by the Assent of the Peers and Commons; and not the Peers and Commons.*

The Stat. of 1. Ric. 2. hath this Beginning, *Richard the 2. by the Assent of the Prelates, Dukes, Earls and Barons, and at the Instance and special Request of the Commons, Ordained.*

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There being a Statute made 5 Ric. 2. c. 5. against Lollards, in the next year the Commons Petition Him, *Suppliant les Commons que come un estatute fuit fait, &c. The Commons beseech, that whereas a Statute was made in the last Parliament, &c. which was never Assented to, nor Granted by the Commons, but that which was done therein was done without their Assent.* In this Petition the Commons acknowledge it a Statute, and so call it, though they assented not to it.

17 Ric. 2. nu. 44. *The Commons desire, some pursuing to make a Law which they conceive hurtful to the Commonwealth; That His Majesty will not pass it.*

As for the Parliaments in Hen. 4. Hen. 5. Hen. 6. Edw. 4. and Ric. 3. Reigns, the most of them do agree in this one Title, *Our Lord the King by the Advice and Assent of His Lords, and at the special Instance and Request of the Commons, Hath ordained.* The Precedents in this Point are so numerous that it were endless to cite them.

The Statutes in Hen. 7. days do for the most part agree, both in the Titles and Bodies of the Acts, in these words: *Our Lord the King by the Assent of the Lord's Spiritual and Temporal, and the Commons in Parliament assembled, and by the Authority of the same, hath ordained.*

Unto this Kings time we find the Commons very often petitioning, but not petitioned unto. The first Petition made to the Commons that I meet with among the Statutes, is but in the middle of this King Hen 7. Reign, which was so well approved, that the Petition it self is turned into a Statute: It begins thus, *To the Right Worshipful Commons in this present Parliament assembled:*
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Sheweth to your discreet Wisdoms, the Wardens of the Fellowship of the Craft of Upholsters within London, &c. This Petition, though it be directed to the Commons in the Title; yet the Prayer of the Petition is turned to the King, and not to the Commons; for it concludes, therefore it may please the Kings Highness by the Advice of the Lords Spiritual and Temporal, and his Commons in Parliament, &c.

Next for the Statutes of Hen. 8. they do most part agree, both in their Titles, and the Bodies of the Acts, with those of his Father King Hen. 7.

Lastly, In the Statutes of Edw. 6. Qu. Mary, Q. Elizabeth, K. James, and of our Sovereign Lord the King that now is, there is no Mention made in their Titles of any Assent of Lords and Commons, or of any Ordaining by the King, but only in general terms it is said, *Acts made in Parliament: or thus, At the Parliament were Enacted:* yet in the Bodies of many of these Acts of these last Princes, there is sometimes Mention made of Consent of Lords and Commons, in these or the like words: *It is Enacted by the King, with the Assent of the Lords and Commons; Except only in the Statutes of our Lord King Charles, wherein there is no Mention, that I can find, of any Consent of the Lords and Commons; or Ordaining by the King: But the words are, Be it Enacted by Authority of Parliament: or else, Be it Enacted by the King, the Lords Spiritual and Temporal, and Commons; as if they were all Fellow-Commissioners.*

Thus it appears, that even till the time of K. Ed. 6. who lived but in our Fathers dayes, it was punctually expressed in every King's Laws, that the Statutes & Ordinances were made by the King. And withal we
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may see by what degrees the Styles, and Titles of Acts of Parliament have been varied, and to whose Disadvantage. The higher we look, the more absolute we find the Power of Kings in Ordaining Laws: nor do we meet with at first so much as the Assent or Advice of the Lords mentioned. Nay, if we cast our eye upon many Statutes of those that be of most Antiquity, they will appear as if they were no Laws at all; but as if they had been made only to teach us, that the Punishments of many Offences were left to the meere pleasure of Kings. The *punitive* part of the Law, which gives all the Vigour and Binding Power to the Law, we find committed by the Statutes to the Kings meer Will and Pleasure, as if there were no Law at all. I will offer a few Precedents to the Point.

3 *Edw. 1. c. 9.* saith, *That Sheriffs, Coroners, and Bailiffs, for concealing of Felonies, shall make grievous Fines at the Kings pleasure.*

Chap. 13. Ordains, *That such as be found culpable of Ravishing of Women, shall Fine at the Kings pleasure.*

Chap. 15. saith, *The penalty for detaining a Prisoner that is mainpernable, is a Fine at the Kings pleasure, or a grievous Amercement to the King; and, he that shall take Reward for deliverance of such, shall be at the Great Mercy of the King.*

Chap. 20. *Offenders in Parks or Ponds shall make Fines at the Kings pleasure.*

Chap. 25. *Committers of Champerty, and Extortioners, are to be punished at the Kings pleasure.*

Chap. 31. *Purveyors, not paying for what they take, shall be Grievously punished at the Kings pleasure.*

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Chap. 32. The King shall punish Grievously the Sheriff, and him that doth maintain Quarrels.

Chap. 37. The King shall grant Attaint in Plea of Land where it shall seem to him necessary.

7 Edw. 1. faith, Whereas of late, before certain Persons deputed to Treat upon Debates between Us and certain Great Men, it was accorded, that in our next Parliament provision shall be made by Us, and the common Assent of the Prelates, Earls, and Barons, that in all Parliaments for ever, every man shall come without Force and Armour. And now in our next Parliament the Prelates, Earls, Barons, and Commonalty have said, That to US it belongeth, through Our Royal Signory, straitly to defend Force of Armour at all times, when it shall please Us, and to punish them which shall do otherwise, and hereunto they are bound to Aid Us their Sovereign Lord at all Seasons when Need shall be.

13 Edw. 1. Takers away of Nuns from Religious Houses, Fined at the Kings Will.

If by the Default of the Lord that will not avoid the Dike, Underwoods, and Bushes in High-ways, murder be done, the Lord shall make Fine at the Kings pleasure.

28 Edw. 1. If a Gold-smith be attainted for not Assaying, Touching, and Working Vessels of Gold, he shall be punished by Ransome at the Kings pleasure.

2 Hen. 4. The Commons desire they may have Answer of their Petitions before the gift of any Subsidy; to which the King answers, He would conferr with the Lords, and do what should be best according to their Advice; and the last day of Parliament He gave this Answer, That that manner of Doing had not been Seen,
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nor used in no time of his Progenitors or Predecessors, that they should have any Answer of their Petitions, or knowledge of it before they have shewed, and finished all their other Business of Parliament, be it of any Grant, Business, or otherwise, and therefore the King would not in any wayes change the Good Customs and Usages Made and Used of Antient Times.

5 Hen. 4. c. 6. *Whereas one Savage did Beat and maim one Richard Chedder Esquire, Menial Servant to Tho. Brook, Knight of the Shire for Somerset-shire, the Statute saith, Savage shall make Fine and Ransom at the Kings Pleasure.*

8 Hen. 4. It is said, *POTESTAS PRINCIPIS NON EST INCLUSA LEGIBUS*, the Power of the Prince is not included in the Laws.

13 Hen. 4. nu. 20. we read of a Restitution in Bloud, and Lands of William Lasenby, by the King, by the Assent of the Lords Spiritual, and Commons; omitting the Lords Temporal.

2 Hen. 5. in a Law made, there is a Clause, That it is the Kings Regalty to grant or deny such of their Petitions as pleaseth Himself.

6 Hen. 6. c. 6. *An Ordinance was made for to endure As long as it shall please the King.*

11 Hen. 7. c. 1. hath this Law, *The King our Sovereign Lord, calling to His remembrance the duty of Allegiance of His Subjects of this His Realm, and that by reason of the same they are bound to serve their Prince and Sovereign Lord for the time being in His Wars, for the Defence of Him, and the Land, against every Rebellion, Power, and Might reared against Him, and with Him to enter and abide in Service in Battel, if Case so require; and that for the same Service, what fortune ever*

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ever fall by chance in the same Battel, against the Mind and Will of the Prince (as in this Land some time past hath been seen) that it is not reasonable, but against all Laws, Reason, and good Conscience, that the said Subjects, going with their Sovereign Lord in Wars, attending upon Him in His Person, or being in other places, by his Commandement within the Land, or without, any thing should lose or forfeit, for doing their true Duty and Service of Allegiance; Be it therefore Enacted, That no Person that shall attend upon the King, and do Him true Service, shall be attainted therefore of Treason, or any other Offence by Act of Parliament, or otherwise.

Also the 18 Chap. of the same Year saith, Where every Subject by the Duty of his Allegiance is bounden to Serve and Assist his Prince and Sovereign Lord at all Seasons when need shall require, and bound to give attendance upon his Royal Person, to defend the same when He shall fortune to go in Person in War for Defence of the Realm, or against His Rebels and Enemies, for the Subduing and Repressing of them, and their malicious purpose.

Christopher Wray, Serjeant at Law, chosen Speaker, 13 Eliz. in his Speech to Her Majesty, said, that for the orderly Government of the Commonwealth, three things were necessary:

1. Religion.
2. Authority.
3. Law.

By the first, we are taught not only our Duty to God, but to obey the Queen, and that not only in Temporals, but in Spirituals, in which Her Power is absolute.

Mr. Grivel in the 35 Eliz. said in Parliament, He wished not the making of many Laws; since the more we

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make, the less Liberty we have our selves; Her Majesty not being bound by them.

For further proof that the Legislative Power is proper to the King, we may take notice, that in ancient time, as Sir Edw. Coke saith, *All Acts of Parliament were in form of Petitions*: if the Petitions were from the Commons, and the Answer of them the King's, it is easie thereby to judge who made the Act of Parliament: Also Sir Jo. Glanvil affirms, that in former times the course of Petitioning the King was this, *The Lords and Speaker, either by Words or Writing, preferr'd their Petition to the King; this then was called the Bill of the Commons, which being received by the King, part He received, part He put out, and part he ratified; for as it came from Him, it was drawn into a Law.*

Also it appears, that *Provisions, Ordinances, and Proclamations*, made heretofore out of Parliament, have been alwayes acknowledged for Laws and Statutes: We have amongst the printed Statutes, one called the *Statute of Ireland*, dated at *Westminster*, 9 Feb. 14 Hen. 3. which is nothing but a Letter of the King to Gerard Son of Maurice Justicer of Ireland.

The Explanations of the Statute of Gloucester made by the King and His Justices only, were received alwayes for Statutes, and are still printed with them.

Also the Statute made for the correction of the twelfth Chapter of the Statute of Gloucester, was Signed under the Great Seal, and sent to the Justices of the Bench after the manner of a Writ Patent, with a certain Writ closed, dated by the Kings hand at *Westminster*, 2 Maii 9 Edw. 1. requiring that they should do and execute all and every thing contained

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tain'd in it, though the same do not accord with the Stat. of Gloucester in all things.

The Provisions of Merton made by the King at an Assembly of Prelates, and the greater part of the Earls and Barons, for the Coronation of the King, and his Queen Elinor, are in the form of a Proclamation, and begin *Provisum est in Curia domini Regis apud Merton.*

19 Hen. 3. a Provision was made, *de assisa presentationis*, which was continued and allowed for a Law untill the Stat. of West. 2. which provides the contrary in expresse words.

In the old Statutes it is hard to distinguish what Laws were made by Kings in Parliament, and what out of Parliament: when Kings called Peers only to Parliament, and of those how many, or whom they pleased, (as it appears anciently they did) it was no easie matter to put a difference between a Council-Table, and a Parliament: or between a Proclamation and a Statute: Yet it is most evident, that in old times there was a distinction between the Kings special or Privy Council, and His Common Council of the Kingdom: and His special Council did sit with the Peers in Parliament, and were of great and extraordinary Authority there.

In the Stat. of Westm. 1. it is said, *These are the Acts of K. Edw. 1. made at His first Parliament by His Council, and by the Assent of Bishops, Abbots, Priors, Earls, Barons, and all the Commonalty of the Realm.*

The Stat. of Acton Burnell hath these words, *The King for Himself, and by His Council, hath Ordained and Established.*

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In articulis super Chartas, when the Great Charter was confirmed at the Request of the Prelates, Earls, and Barons, are found these two provisions:

1. *Nevertheless the King and his Council do not intend by reason of this Statute to diminish the Kings Right.*

2. *Notwithstanding all these things before-mentioned, or any part of them, both the King and his Council, and all they that were present, Will and intend, that the Right and Prerogative of His Crown shall be saved to Him in all things.*

The Stat. of Escheators hath this Title, *At the Parliament of our Sovereign Lord the King, By His Council it was agreed, and also by the King himself commanded.*

1 Edw. 3. where *Magna Charta* was confirmed, this Preamble is found, *At the request of the Commonalty, by their Petition made before the King and His Council in Parliament, by the Assent of the Prelates, Earls, and Barons, &c.*

The Statute made at York 9 Edw. 3. goeth thus : *Whereas the Knights, Citizens, and Burgeses desired Our Sovereign Lord the King in His Parliament by their Petition, &c. Our Sovereign Lord the King, desiring the profit of His People, By the Assent of His Prelates, Earls, Barons, and other Nobles of His Realm, and by the Advice of His Council being there, Hath Ordained.*

25. Edw. 3. In the Statute of Purveyors, where the King, at the request of the Lords and Commons, made a Declaration what Offences should be adjudged Treason: It is there further said, *if per-case any man ride Armed with Men of Arms against any other to slay him, or rob him, It is not the Mind of the King, or of His Council : that in such cases it shall be adjudged Treason.* By this Statute it appears, that even

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even in the case of *Treason*, which is the Kings own Cause, as, *whereas a man doth compass, or imagine the Death of Our Lord the King, or a man do wage War against Our Lord the King in His Realm, or be adherent to the Kings Enemies in his Realm, giving to them Aid or Comfort in the Realm, or elsewhere; in all these cases it is the Kings Declaration onely that makes it to be Treason: and though it be said, that Difficult points of Treason shall be brought and shewed to the King, and His Parliament, yet it is said, it is the mind of the King and his Council, that determines what shall be adjudged Treason, and what Felony, or Trespasse.*

27 *Edm. 3.* the Commons presenting a Petition to the King which the Kings Council did dislike, were content thereupon to amend and explain their Petition: the Petition hath these words, *To their most redoubted Sovereign Lord the King, Praying, Your said Commons, that whereas they have prayed him to be discharged of all manner of Articles of the Eyre &c. which Petition seemeth to his Council to be prejudicial unto him, and in Disinherison of his Crown if it were so generally granted. His said Commons not willing nor desiring to demand things of Him, or of his Crown perpetually, as of Escheats, &c. But of Trespases, Misprisions, Negligences, Ignorances, &c.*

And as in Parliaments the Kings Council were of Supereminent Power, so out of Parliament Kings made great Use of them.

King *Edm. 1.* finding that *Bogo de Cläre* was discharged of an Accusation brought against him in Parliament, commanded him nevertheless to appear before him and his Council, *ad faciendum & recipiendum quod per Regem & ejus Concilium fuerit*

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faciendum, and so proceeded to the Examination of the whole Cause, 8 *Edw.* 1.

Edw. 3. In the Star-chamber (which was the ancient Councel-table at *Westminster*) upon the complaint of *Eliz. Audley*, commanded *James Audley* to appear before *Him* and *His Councel*; and determined a Controversie between them, touching Land contained in her Jointure, *Rot. claus. de An.* 41 *Edw.* 3.

Hen. 5. In a Suit before *Him* and *His Councel*, For the Titles of the Manors of *Serre* and *St. Lawrence* in the Isle of *Thanet* in *Kent*, took order for the Sequestering the Profits till the Right were tried.

Hen. 6. commanded the Justices of the Bench to stay the Arraignment of one *Verney* in *London*, till they had other Commandment from *Him* and *His Councel*, 34 *Hen.* 6. *rot.* 37. in *Banco*.

Edw. 4. and his Councel in the Star-Chamber heard the Cause of the Master and poor Brethren of *Saint Leonard's* in *York*, complaining that *Sir Hugh Hastings*, and others, withdrew from them a great part of their Living, which consisted chiefly upon the having of a Thrave of Corn of every Plow-land within the Counties of *York*, *Westmorland*, *Cumberland*, and *Lancashire*, *Rot. pat. de an.* 8. *Edw.* 4. *part.* 3. *memb.* 14.

Hen. 7. and his Councel in the Star-Chamber, decreed, that *Margery* and *Florence Becket* should sue no further in their cause against *Alice Radley* Widow, for Lands in *Wolwich* and *Plumsted* in *Kent*, for as much as the matter had been heard first before the Councel of *Edw.* 4. after that before the President of the Requests of that King *Hen.* 7. and then lastly before the Councel of the said King, 1 *Hen.* 7.

In

In the time of *Hen. 3.* an *Order* or *Provision* was made by the *Kings Council*, and it was pleaded at the *Common Law* in *Bar* to a *Writ of Dower*; the *Plaintiffs Attourney* could not deny it, and thereupon the *Judgment* was, *ideo sine die*. It seems in those days an *Order* of the *Kings Council*, was either parcell of the *Common Law*, or above it.

Also we may find, the *Judges* have had *Regard*, that before they would resolve or give *Judgment* in new *Cases*, they consulted with the *Kings Privy Council*.

In the case of *Adam Brabson* who was assaulted by *R. W.* in the Presence of the *Justices of Assise* at *Westminster*, the *Judges* would have the *Advice* of the *Kings Council*: for in a like Case, because *R. C.* did strike a *Juror* at *Westminster* which passed against one of his *Friends*, *It was adjudged by all the Council that his right hand should be cut off, and his Lands and Goods forfeited to the King.*

Green and *Thorp* were sent by the *Judges* to the *Kings Council*, to demand of them whether by the *Stat. of 14 Edw. 3. 16.* a word may be amended in a *Writ*, and it was answered that a word may be well amended, although the *Stat.* speaks but of a *Letter* or *Syllable*,

In the Case of *Sir Thomas Ogthred*, who brought a *Formedon* against a poor man and his *Wife*; they came and yielded to the *Demandant*, which seemed suspicious to the *Court*; whereupon *Judgment* was staid, and *Thorp* said that in the like case of *Giles Blacket* it was spoken of in *Parliament*, and we were commanded that when any like should come we should not go to *Judgment* without good *Advice*; therefore the *Judges Conclusion* was, *Sues an coun-*

seil & comment ils voient que nous devons faire, nous volums faire, & autrement nient en cest case; sue to the Councel, and as they will have us to do, we will do; and otherwise not in this Case, 39 Edm. 3.

Thus we see the Judges themselves were guided by the *Kings Councel*, and yet the Opinions of Judges have guided the Lords in Parliament in Point of Law.

All the Judges of the Realm, Barons of Exchequer, of the Quoif; the Kings learned Councel, and the Civilians, Masters of Chancery, are called Temporal Assistants by Sir *Edm. Coke*, and though he deny them Voices in Parliament, yet he confesseth, that by their Writ they have Power both to treat, and to give Councel. I cannot find that the Lords have any other Power by their Writ: the Words of the Lords Writ are, *That you be present with Us the Prelates, Great men, and Peers, to treat and give your Councel*: The words of the Judges Writ are, *that you be present with Us, and others of the Councel* (and sometimes with *Us* only) to treat and give your Councel.

The Judges usually joyned in Committees with the Lords in all Parliaments, even in Queen *Eliz.* Reign, untill her 39th Year; and then upon the 7th of November, the Judges were appointed to attend the Lords. And whereas the Judges have Liberty in the upper House it self, upon Leave given them by the L. Keeper, to cover themselves, now at Committees they sit always uncovered.

The Power of Judges in Parliament is best understood, if we consider how the judicial Power of Peers hath been exercised in matter of Judicature: we may find it hath been the Practice, that

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that though the Lords in the Kings Absence give Judgment in Point of Law, yet they are to be directed and regulated by the Kings Judges, who are best able to give Direction in the difficult Points of the Law; which ordinarily are unknown to the Lords. And therefore, if any Error be committed in the *Kings Bench*, which is the highest ordinary Court of Common Law in the Kingdom, that Error must be redressed in Parliament. And the Manner is, saith the Lord Chancellor Egerton, *If a Writ of Error be sued in Parl. upon a Judgment given by the Judges in the Kings Bench, the Lords of the higher House alone, (without the Commons) are to examine the Errors. The Lords are to proceed according to the Law, and for their Judgments therein they are to be informed by the Advice and Counsel of the Judges, who are to inform them what the Law is, and to direct them in their Judgment; for the Lords are not to follow their own Discretion or Opinion otherwise.*

28 Hen. 6. the Commons made Sute that *W. de la Pool D. of Suffolk*, should be committed to Prison for many Treasons, and other Crimes; the Lords of the higher House were doubtful what Answer to give; the Opinion of the Judges was demanded, their Opinion was, that he ought not to be committed, for that the Commons did not charge him with any particular Offence, but with general Reports and Slanders: this Opinion was allowed.

31. Hen. 6. A Parliament being prorogued, in the Vacation the Speaker of the House of Commons was condemned in a thousand Pounds Damages in an Action of Trespass, and committed to Prison in Execution for the same: when the Parliament was

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was re-assembled, the Commons made sute to the King, and Lords, to have their Speaker delivered. The Lords demanded the Opinion of the Judges, whether he might be delivered out of Prison by Privilege of Parliament; upon the Judges Answer it was concluded, that *the Speaker should remain in Prison according to the Law, notwithstanding the Privilege of Parliament, and that he was Speaker*; which Resolution was declared to the Commons by Moyle the Kings Serjeant at Law, and the Commons were commanded in the Kings name by the Bishop of Lincoln (in the absence of the Arch-bishop of Canterbury, then Chancellor) to chuse another Speaker.

7 Hen. 8. A Question was moved in Parliament, *Whether Spiritual Persons might be convented before Temporal Judges for criminal Causes?* there Sir John Fineux and the other Judges delivered their Opinion, *that they might and ought to be; and their Opinion allowed and maintained by the King and Lords, and Dr. Standish who before had holden the same Opinion, was delivered from the Bishops.*

I find it affirmed, *that in Causes which receive Determination in the House of Lords, the King hath no Vote at all, no more than in other Courts of ministerial Jurisdiction.* True it is, the King hath no Vote at all if we understand by *Vote*, a *Voice among others*: for he hath no partners with *Him* in giving Judgement. But if by *no Vote* is meant *he hath no Power to judge*; we dispoil him of his Sovereignty: It is the chief Mark of Supremacy to judge in the highest Causes, and last Appeals. This the Children of Israel full well understood, when they petitioned for a *King to judge them*; if the *dernier resort* be to the Lords alone, then they have the Supremacy.

cy. But as *Moses* by chusing Elders to judge in small Causes, did not thereby lose his Authority to be Judge himself when he pleased, even in the smallest matters; much less in the greatest, which he reserved to himself: so Kings by delegating others to judge under them, do not thereby denude themselves of a Power to judge when they think good.

There is a Distinction of these times, that *Kings themselves may not judge, but they may see and look to the Judges, that they give Judgment according to Law*, and for this Purpose only (as some say) Kings may sometimes sit in the Courts of Justice. But it is not possible for Kings to see the Laws executed, except there be a Power in Kings both to judge when the Laws are duely executed, and when not; as also to compell the Judges if they do not their Duty. Without such Power a King sitting in Courts is but a Mockery, and a Scorn to the Judges. And if this Power be allowed to Kings, then their Judgments are supream in all Courts. And indeed our *Common Law*, to this Purpose doth presume that the King hath all Laws within the Cabinet of His Breast, in *Scrinio pectoris*, saith *Crompton's Jurisdiction*. 108.

When several of our Statutes leave many things to the *Pleasure of the King*, for us to interpret all those Statutes of the *Will and Pleasure of the Kings Justices only*, is to give an absolute Arbitrary Power to the Justices in those Cases wherein we deny it to the King.

The Statute of 5 *Hen. 4. c. 2.* makes a Difference between the *King*, and the *Kings Justices*, in these words, *Divers notorious Felons be indicted of divers Felonies, Murders, Rapes: and as well before the Kings Justices, as before the King himself, arreigned of the same Felonies.*

I read

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I read, that in *An. 1256. Hen. 3.* sate in the *Exchequer*, and there set down Order for the Appearance of *Sheriffs*, and bringing in their Accounts; there was five Marks set on every *Sheriffs* Head for a Fine, because they had not distrained every Person that might dispend fifteen pounds Lands by the Year, to receive the Order of *Knighthood*, according as the same *Sheriffs* were commanded.

In *Michaelmas* Term, 1462. *Edw. 4.* sate three dayes together in open Court in the *Kings Bench*.

For this Point there needs no further Proofs, because *Mr. Pryn* doth confess, that *Kings themselves* have sate in Person in the *Kings Bench*, and other Courts, and there given Judgment, p. 32. Treachery and Disloyalty, &c.

Notwithstanding all that hath been said for the Legislative and Judicial Power of Kings, *Mr. Pryn* is so far from yielding the King a Power to make Laws, that he will not grant the King a power to hinder a Law from being made; that is, he allows Him not a *Negative Voice* in most cases, which is due to every other, even to the Meanest Member of the House of Commons in his Judgment.

To prove the King hath not a *Negative Voice*, his main, and in truth, his only Argument insisted on, is a *Coronation-Oath*, which is said anciently some of our Kings of England have taken, wherein they grant to defend and protect the just Laws and Customs, which the *Vulgar* hath, or shall chuse: *Justas Leges & Consuetudines quas vulgus elegerit*: Hence *Mr. Pryn* concludes, that the King cannot deny any Law which the Lords and Commons shall make choice of; for so he will have *vulgus* to signifie.

Though

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Though neither our *King*, nor many of His Predecessors ever took this Oath, nor were bound to take it, for ought appears; yet we may admit that our King hath taken it; and answer, we may be confident, that neither the Bishops, nor Privy Council, nor Parliament, nor any other whosoever they were that framed, or penn'd this Oath, ever intended in this word *Vulgus* the *Commons* in Parliament, much less the *Lords*: they would never so much disparage the Members of Parliament, as to disgrace them with a Title both base and false: it had been enough, if not too much, to have called them *Populus*, the *People*; but *Vulgus*, the *Vulgar*, the *rude Multitude* (which hath the Epithet of *Ignobile Vulgus*) is a word as dishonourable to the Composers of the Oath to give, or for the King to use, as for the Members of the Parliament to receive; it being most false: for the *Peers* cannot be *Vulgus*, because they are the prime Persons of the Kingdom: next, the Knights of the Shires are, or ought to be *notable* Knights, or *notable* Esquires, or Gentlemen, *born in the Counties, as shall be able to be* Knights: then the *Citizens and Burgeffes are to be most sufficient*, none of these can be *Vulgus*: even those Free-holders that chuse Knights, are the best and ablest men of their Counties; there being for every Free-holder, above ten of the Common People to be found to be termed the *Vulgar*: Therefore it rests that *vulgus* must signifie the *vulgar* or *common People*, and not the *Lords and Commons*.

But now the Doubt will be, what the Common People, or *vulgus*, out of Parliament, have to do to chuse Laws? The Answer is easie and ready; there

there goeth before *quas vulgus*, the Antecedent *Consuetudines*, that is, the Customs which the *Vulgar* hath, or shall chuse. Do but observe the Nature of Custom, and it is the *Vulgus* or Common People only who chuse Customs: Common Usage time out of mind creates a Custom, and the commoner an Usage is, the stronger and the better is the Custom: no where can so common an Usage be found, as among the *Vulgar*, who are still the far greatest part of every Multitude: if a Custom be common through the whole Kingdom, it is all one with the Common Law in England, which is said to be Common Custom. Thus in plain Terms to protect the Customs which the *Vulgar* chuse, is to swear to protect the Common Laws of England.

But grant that *Vulgus* in the Oath, signifies Lords and Commons, and that *Consuetudines* doth not signify Customs, but Statutes, (as Mr. Pryn for a desperate Shift affirms,) and let *elegerit* be the Future, or Preterperfect Tense, even which Mr. Pryn please, yet it cannot exclude the Kings negative Voice; for as *Consuetudines* goeth before *quas vulgus*, so doth *justas* stand before *leges & consuetudines*: so that not all Laws, but only all just Laws are meant. If the sole Choice of the Lords and Commons, did oblige the King to protect their Choice, without Power of Denial, what Need, or why is the Word *justas* put in, to raise a Scruple that some Laws may be unjust? Mr. Pryn will not say that a Decree of a General Council, or of a Pope is infallible, nor (I think) a Bill of the Lords and Commons is infallible, just, and impossible to erre; if he do, Sir Edward Coke will tell him that *Parliaments have been utterly deceived, and that in cases of greatest Moment, even in*
case

case of High Treason: and he calls the Statute of 1 Hen. 7. an unjust and strange Act. But it may be Mr. Pryn will confesse that Laws chosen by the Lords and Commons may be unjust, so that the Lords and Commons themselves may be the Judges of what is just, or unjust. But where a King by Oath binds his Conscience to protect just Laws, it concerns him to be satisfied in his own Conscience, that they be just, and not by an implicate Faith, or blind Obedience: no man can be so proper a Judge of the Justness of Laws, as he whose Soul must lie at the Stake for the Defence and Safeguard of them.

Besides, in this very Oath the King doth swear, to do equal and right Justice and Discretion, in Mercy and Truth in all His Judgments: *facies fieri in omnibus judiciis tuis equam & rectam justitiam & discretionem in Misericordia & Veritate*: if we allow the King Discretion and Mercy in his Judgments, of Necessity he must judge of the Justness of the Laws.

Again, the clause of the Oath, *quas vulgus elegerit*, doth not mention the assenting unto, or granting any new Laws, but of holding, protecting, and strengthening with all his Might, the just Laws that were already in Being: there were no need of Might or Strength, if assenting to new Laws were there meant.

Some may wonder, why there should be such Labouring to deny the King a negative Voice, since a negative Voice is in it self so poor a thing; that if a man had all the Negative Voices in the Kingdom, it would not make him a King; nor give him Power to make one Law: a negative Voice is but a privative Power, that is, no Power at all to do or act any

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any thing; but a Power only to hinder the Power of another. *Negatives* are of such a malignant or destructive Nature, that if they have nothing else to destroy, they will, when they meet, destroy one another, which is the reason why two *Negatives* make an *Affirmative*, by destroying the *Negation* which did hinder the *Affirmation*: A King with a *Negative Voice* only, is but like a *Syllogisme* of *pure negative Propositions*, which can conclude nothing. It must be an *Affirmative Voice* that makes both a King, and a Law, and without it there can be no imaginable Government.

The reason is plain why the *Kings negative Voice* is so eagerly opposed: for though it give the King no Power to do any thing; yet it gives him a Power to hinder others: though it cannot make Him a King, yet it can help him to keep others from being Kings.

For Conclusion of this Discourse of the *negative Voice of the King*, I shall oppose the Judgment of a *Chief Justice of England*, to the Opinion of him that calls himself an *utter Barister of Lincolns Inn*, and let others judge who is the better Lawyer of the two: the words are *Brañon's*, but concern Mr. Pryn to lay them to heart; *Concerning the Charters and Deeds of Kings, the Justices nor private men neither ought, nor can dispute; nor yet if there rise a Doubt in the Kings Charter, can they interpret it; and in doubtful and obscure Points, or if a word contain two Senses, the Interpretation, and Will of Our Lord the King is to be expected, seeing it is his part to interpret, who makes the Charter*: full well Mr. Pryn knows, that when *Brañon* writ, the Laws that were then made, and strived for, were called the *Kings Charters*, as *Magna Charta, Charta de Foresta*, and others: so that in
Brañon

Bracton's Judgment the King hath not only a Negative Voice to hinder, but an Affirmative, to make a Law, which is a great deal more than Master Pryn will allow him.

Not only the Law-maker, but also the sole Judge of the People is the King, in the Judgment of Bracton; these are his words: *Rex & non alius debet judicare, si solus ad id sufficere possit*, the King and no other ought to judge, if He alone were able. Much like the words of Bracton, speaketh Briton, where, after that he had shewed that the King is the Viceroy of God, and that He hath distributed his Charge into sundry portions, because He alone is not sufficient to hear all Complaints of His People, then he addeth these words, in the Person of the King: *Nous volons que nostre jurisdiction soit sur tous Jurisdictions, &c.* We Will that Our Jurisdiction be above all the Jurisdictions of Our Realm, so as in all manner of Felonies, Trespasses, Contracts, and in all other actions Personal or Real We have Power to yield, or cause to be yielded, such Judgments as do appertain without other Process, wheresoever we know the right Truth as Judges.

Neither was this to be taken, saith Mr. Lambard, to be meant of the Kings Bench, where there is only an imaginary presence of His Person, but it must necessarily be understood of a Jurisdiction remaining and left in the King's Royal Body and Brest, distinct from that of His Bench, and other ordinary Courts; because he doth immediately after, severally set forth by themselves, as well the authority of the Kings Bench, as of the other Courts.

And that this was no new-made Law, Mr. Lambard puts us in mind of a Saxon Law of King Edgar.

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gars. *Nemo in lite Regem appellato, &c.* Let no man in Suit appeal unto the King, unless he cannot get Right at home, but if that Right be too Heavy for him, then let him go to the King to have it eased. By which it may evidently appear, that even so many years ago there might be Appellation made to the Kings Person, whensoever the Cause should enforce it.

The very like Law in Effect is to be seen in the Laws of *Canutus* the Dane, sometimes King of this Realm, out of which Law Master *Lambard* gathers, that the King Himself had a High Court of Justice, wherein it seemeth He sate in Person, for the words be, Let him not seek to the King, and the same Court of the King did judge not only according to meer Right and Law, but also after Equity and good Conscience.

For the Close, I shall end with the Suffrage of our late Antiquary Sir *Henry Spelman*, in his Glossary, he saith, *Omnis Regni Justitia solius Regis est, &c.* All Justice of the Kingdom is only the King's, and He alone, if He were able, should Administer it; but that being impossible, He is forced to delegate it to Ministers, whom he bounds by the limits of the Laws; the positive Laws are only about Generals; in particular Cases, they are sometimes too strict, sometimes too remiss; and so, oft Wrong instead of Right will be done, if we stand to strict Law: also Causes hard and difficult daily arise, which are comprehended in no Law-books, in those there is a necessity of running back to the King, the Fountain of Justice, and the Vicegerent of God himself, who in the Commonwealth of the Jews took such Causes to His own cognisance, and left to Kings not only the Example of such Jurisdiction, but the Prerogative also.

Of Privilege of Parliament.

WHat need all this ado, will some say, to sift out what is comprised in the Writ for the Election of the Commons to Parliament, since it is certain, though the *Writ* doth not, yet *Privilege of Parliament* gives sufficient Power for all Proceedings of the Two Houses? It is answered, that what slight Esteem soever be made of the Writ, yet in all other cases the *Original Writ* is the Foundation of the whole business, or action: and to vary in Substance from the Writ, makes a nullity in the Cause, and the Proceedings thereupon: and where a Commissioner exerciseth more Power than is warranted by his Commission, every such Act is void, and in many Cases punishable: yet we will lay aside the Writ, and apply our selves to consider the Nature of *Privilege of Parliament*. The Task is the more difficult, for that we are not told what the number of Privileges are, or which they be; some do think that as there be dormant Articles of Faith in the *Roman Church*, which are not yet declared; so there be likewise Privileges dormant in the House of Commons, not yet

revealed, we must therefore be content in a generality to discourse of the Quality or Condition of Privilege of Parliament, and to confine our selves to these three points:

1. That Privilege of Parliament gives no power; but only helps to the execution of the Power given by the Writ.

2. That the Free-holders by their Elections give no Privilege.

3. That Privilege of Parliament is the Gift of the King.

First, The End or Scope of Privilege of Parliament is not to give any Power to do any publick Act, not warranted by the Writ: but they are intended as Helps only to enable to the Performance of the Duty enjoyned, and so are subservient to the Power comprised in the Writ: For Instance, the *grand Privilege of Freedom from Arrests* doth not give any Power at all to the *House of Commons* to do any act; but by taking away from the Free-holders and other Subjects the Power of Arrests, the Commons are the better inabled to attend the Service to which they are called by the King.

In many other Cases the Servants, or Ministers of the King are privileged, and protected much in the same Nature. The
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Servants in household to the King may not be arrested without special Licence: Also the Officers of the Kings Courts of Justice, have a Privilege not to be sued in any other Court but where they serve and attend; and to this Purpose they are allowed a *Writ of Privilege*. Likewise all such as serve the King in his Wars, or are imployed on forreign Affairs for him, are protected from Actions and Sutes. Nay the Kings Protection descends to the privileging even of *Laundresses, Nurfes, and Midwives*, if they attend upon the Camp, as Sir *Edm. Coke* saith, *quia Lotrix, seu Nutrix, seu obstetrix*. Besides the King protects his Debtors from Arrests of the Subject till his own Debts be paid.

These sorts of Protections are Privileges the Common Law takes notice of, and allows: and hath several Distinctions of them; and some are *Protections, quia profecturus*, and others are, *quia moraturus*: some are with a Clause of *volumus* for Stay of Suits: others with a Clause of *Nolumus* for the safety of mens Persons, Servants, and Goods: and the Kings Writs do vary herein according to the Nature of the Business.

But none of these Privileges or Protections do give any Power; they are not po-

sitive, but *privative*: they take away and deprive the Subject of the Power, or Liberty to arrest, or sue, in some cases only: no Protection or Privilege doth defend in point of *Treason*, *Felony*, or *Breach* of the *Peace*: Privileges are directly contrary to the Law, for otherwise they should not be Privileges, and they are to be interpreted in the strictest manner, as being *odious and contrary* to Law: we see the Use of Privileges; they do but serve as a Dispensation against Law, intended originally, and principally for the expediting of the Kings Business; though secondarily, and by accident there do sometimes redound a Benefit by them to the Parties themselves that are protected. Strictly, and properly every Privilege must be against a publick or common Law, for there is no Use or Need of a *private Law* to protect, where there is no *publick Law* to the contrary: Favours and Graces which are only *besides*, and *not against* the Law, do not properly go under the name of *Privileges*, though common Use do not distinguish them: I know no other Privilege that can be truly so called, and to belong to the House of Commons, which is so vast and great, as this Privilege of their *Persons*, *Servants*, and *Goods*: this being indeed against the Common Law,
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and doth concern the whole Kingdom to take notice of it, if they must be bound by it.

Touching this grand Privilege of Freedom from Arrests, I read that in the 33 *Hen. 8.* the Commons did not proceed to the Punishment of Offenders for the breach of it, untill the Lords referred the Punishment thereof to the Lower House. The Case is thus reported, *George Ferrers* Gentleman, Servant to the King, and Burgesse for *Plymouth*, going to the Parliament House was arrested in *London*, by Process out of the Kings Bench for Debt, wherein he had before been condemned as Surety for one *Welden* at the Sute of one *White*: which Arrest signified to Sir *Thomas Moyl* Speaker, and to the rest; the Serjeant (called *Saint-Johns*) was sent to the Counter in *Breadstreet* to demand *Ferrers*: The Officer of the Counter refused to deliver him, and gave the Serjeant such ill Language that they fall to an Affray: the Sheriff coming, taketh the Officers part, the Serjeant returned without the Prisoner: This being related to the Speaker and Burgeses, they would sit no more without their Burgeses; and rising, repaired to the Upper House, where the Case was declared by the Speaker before Sir *Thomas Audley* Chancellor, and the Lords and

Judges there assembled, who judging the Contempt to be very great, referred the Punishment thereof to the House of Commons it self.

This Privilege of Freedom from Arrests is the only Privilege which Sir *Edward Coke* finds to belong to the House of Commons; he cannot, or at least he doth not, so much as name any other in his Section of the *Privileges of Parliament*: neither doth he bring so much as one Precedent for the Proof of this one Privilege for the House of Commons; which may cause a Doubt that this sole Privilege is not so clear as many do imagine. For in a Parliament in the 27 *Eliz.* *Richard Coke*, a Member, being served with a *Subpœna of Chancery*, the Lord Chancellor thought the House had no such Privilege for *Subpœna's* as they pretended; neither would he allow of any Precedents of the House committed unto them, formerly used in that Behalf, unless the House of Commons could also prove the same to have been likewise thereupon allowed, and ratified also by Precedents in the Court of Chancery.

In the 39 of *Eliz.* Sir *Edm. Hobby*, and Mr. *Brograve*, Attorney of the Dutchy, were sent by the House to the Lord Keeper, in the name of the whole House, to require his Lordship to

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revoke two Writs of *Subpæna's*, which were served upon M. Th. Knevit, a Member of the House, since the Beginning of Parliament. The Lord Keeper demanded of them, whether they were appointed by any advised Consideration of the House, to deliver this Message unto him with the word *Required*, in such manner as they had done, or no: they answered his Lordship, yea: his Lordship then said, as he thought reverently and honourably of the House, and of their Liberties, and Privileges of the same, so to revoke the said *Subpæna's* in that sort, was to restrain Her Majesty in Her greatest Power, which is, Justice in the Place wherein he serveth under Her, and therefore he concluded, as they had required him to revoke his Writ, so he did require to deliberate.

Upon the 22 of February, being Wednesday, 18 Eliz. Report was made by Mr. Attorney of the Dutchy, upon the Committee, for the delivering of one Mr. Hall's man; that the Committee found *no Precedent for setting at large by the Mace any Person in Arrest but only by Writ*, and that by divers Precedents of Records perused by the said Committee, it appeareth that every Knight, Citizen or Burges which doth require Privilege, hath used in that case to take a Corporal Oath before the Lord Chancellor,

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lor, or Lord Keeper, that *the party* for whom such Writ is prayed, *Came up with him, and was his Servant at the time of the Arrest made.* Thereupon M. Hall was moved by the House to repair to the Lord Keeper, and make Oath, and then take a Warrant for a Writ of Privilege for his Servant.

It is accounted by some to be a Privilege of Parliament to have power to Examine *Misdemeanours* of Courts of Justice, and Officers of State : yet there is not the meanest Subject but hath liberty, upon just cause, to question the misdemeanour of any Court or Officer, if he suffer by them ; there is no Law against him for so doing ; so that this cannot properly be called a Privilege, because it is not against any publick Law : It hath been esteemed a great Favour of *Princes* to permit such Examinations : For, when the Lords were displeased with the Greatness of *Pierce Gaveston*, it is said, that in the next Parliament, *the whole Assembly obtain of the King to draw Articles of their Grievances*, which they did. Two of which Articles were, First, that *all Strangers should be banished the Court and Kingdom* : of which *Gaveston* was one. Secondly, that *the business of the State should be treated of by the Council of the Clergy and Nobles.*

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In the Reign of King *Henry* the sixth, one *Mortimer*, an Instrument of the Duke of *York*, by promising the *Kentish* men a *Reformation*, and freedom from *Taxations*, wrought with the people, that they drew to a Head, and made this *Mortimer* (otherwise *Jack Cade*) their Leader: who stiled himself Captain *Mend-all*: He presents to the Parliament the Complaints of the Commons, and he petitions that the Duke of *York* and some other Lords might be received by the King into favour, by the undue Practices of *Suffolk* and his Complices, commanded from his Presence; and that all their Opposites might be banished the Court, and put from their Offices, and that there might be a general amotion of corrupt Officers: These Petitions are sent from the *Lower House* to the *Upper*, and from thence committed to the Lords of the Kings *Privy Council*, who, having examined the particulars, explode them as frivolous, and the Authors of them to be presumptuous Rebels.

Concerning *Liberty*, or freedom of Speech, I find, that at a Parliament at *Black Friars* in the 14 of *Henry* the Eighth, Sir *Tho. More* being chosen Speaker of the House of Commons: He first disabled himself, and then petitioned the King, that if in Communication
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and Reasoning, any man in the Commons House should speak more largely than of duty they ought to do, that all such Offences should be pardoned, and to be entred of Record; which was granted. It is observable in this Petition, that liberty or freedom of Speech is not a power for men to speak what they will, or please, in Parliament; but a Privilege not to be punished, but pardoned for the offence of speaking *more largely than in duty ought to be*; which in an equitable construction must be understood of rash, unadvised, ignorant, or negligent Escapes, and Slips in Speech: and not for wilful, malicious Offences in that kind; And then the Pardon of the King was desired to be upon Record, that it might be pleaded in Bar to all Actions. And it seemeth that *Ric. Strood* and his Complices, were not thought sufficiently protected for their free Speech in Parliament, unless their Pardon were confirmed by the King in Parliament, for there is a printed *Statute* to that purpose in *H. 8th* time.

Touching the freedom of Speech, the Commons were warned in *Q. Eliz.* dayes not to meddle with the *Queens Person, the State, or Church-government*. In her time the Discipline of the Church was so strict, that the *Litany* was read every morning in the House of Commons, during the Parliament, and when the
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Commons first ordered to have a *Fast in the Temple upon a Sunday*, the Queen hindred it.

21 Jan. Saturday, 23 Eliz. the Case is thus reported: Mr. *Paul Wentworth* moveth for a Publick set Fast, and for a Preaching every morning at 7 of the clock, before the House fate: the House was divided about the Fast, 115 were for it, and an 100 against it; it was ordered, that *as many of the House as conveniently could, should on Sunday fortnight after, Assemble, and meet together in the Temple-Church, there to hear Preaching, and to joyn together in Prayer, with Humiliation and Fasting, for the Assistance of God's Spirit in all their Consultations, during this Parliament, and for the Preservation of the Queens Majesty and Her Realms: And the Preachers to be appointed by the Privy Councel that were of the House, that they may be Discreet, not meddling with Innovation or Unquietness.* This Order was followed by a Message from Her Majesty to the House, declared by Mr. Vice-chamberlain, that Her Highness had a great *Admiration of the rashness of this House, in committing such an apparent Contempt of her expresse Command, as to put in execution such an Innovation, without Her privacy, or pleasure first known.* Thereupon Mr. Vice-chamberlain moved the House to make humble submission to Her Majesty, acknowledging the said Offence, and Contempt, craving a Remission of the same, with a full pur-

purpose to forbear the Committing of the like hereafter: and by the Consent of the whole House, Mr. Vice-chamberlain carried their Submission to her Majesty.

35 *Eliz.* Mr. *Peter Wentworth*, and Sir *Henry Bromley*, delivered a Petition to the Lord Keeper, desiring the Lords of the upper House to be Suppliants with them of the lower House, unto her Majesty for entailing the Succession of the Crown. Whereof a Bill was ready drawn by them. Her Majesty was highly displeased herewith, as contrary to her former strait Command, and charged the Council to call the Parties before them: Sir *Thomas Henage* sent for them, and after Speech with them, commanded them to forbear the Parliament, and not to go out of their several Lodgings; after, they were called before the Lord Treasurer, the Lord *Buckhurst*, and Sir *Thomas Henage*; Mr. *Wentworth* was committed by them to the Tower, Sir *Henry Bromley*, with Mr. *Richard Stevens*, to whom Sir *Henry Bromley* had imparted the Matter, were sent to the Fleet, as also Mr. *Welch* the other Knight for *Worcestershire*.

In the same Parliament Mr. *Morrice*, Attorney of the Court of Wards, moved against the hard Courses of the Bishops, Ordinaries, and other Ecclesiastical Judges in
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their Courts, used towards sundry Learned, and godly Ministers and Preachers; and spake against Subscription, and Oaths; and offer'd a Bill to be read against Imprisonment for refusal of Oaths: Mr. Dalton opposed the Reading of it, as a thing expressly against Her Majesties Command, to meddle in: Doctor Lewin shewed, that Subscription was used even at Geneva: At two of the clock the same day, the Speaker, Mr. Coke, (afterwards Sir Edward Coke) was sent for to the Court, where the Queen Her self gave him in Command a Message to the House: She told him, *It being wholly in Her Power to Call, to Determine, to Assent, or Dissent to any thing done in Parliament: that the Calling of This was only, that the Majesty of God might be more religiously observed, by compelling, by some sharp Laws, such as neglect that Service: and that the Safety of Her Majesties Person, and the Realm might be provided for: It was not meant they should meddle with matters of State, or Causes Ecclesiastical, (for so Her Majesty termed them) she wondred that any could be of so high Commandement, to attempt (they were Her own words) a thing so expressly contrary to that which She had commanded: wherefore with this She was highly offended: And because the words spoken by my Lord Keeper, are*
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not now perhaps well remembred, or some be now here that were not then present. Her Majesties present Charge and expresse Command is, that no Bill touching the said matter of State or Reformation in Causes Ecclesiastical, be exhibited; and upon my Allegiance (saith Mr. Coke) I am charged, if any such Bill be exhibited, not to read it. I have been credibly informed, that the Queen sent a Messenger, or Serjeant at Arms, into the House of Commons, and took out Mr. Morrice, and committed him to prison: within few dayes after, I find Mr. Wroth moved in the House, that they might be humble Suitors to Her Majesty, that She would be pleased to set at liberty those Members of the House that were restrained. To this it was answered by the Privy Counsellors, that Her Majesty had committed them for Causes best known to Her self, and to press Her Highness with this Suit, would but hinder them whose Good is sought: that the House must not call the Queen to account for what she doth of Her Royal Authority: that the Causes for which they are restrained may be High and Dangerous: that Her Majesty liketh no such Questions; neither doth it become the House to search into such matters.

In the 39 Eliz. The Commons were told their Privilege was Tea, and No: and that
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Her Majesties Pleasure was, that if the Speaker perceived any idle heads which would not stick to hazard their own Estates; which will meddle with reforming the Church, and transforming the Commonweal, and do exhibit Bills to that purpose; the Speaker should not receive them till they were viewed and considered by those, whom it is fitter should consider of such things, and can better judge of them: and at the end of this Parliament, the Queen refused to pass 48 Bills which had passed both Houses.

In the 28 of Eliz. the Queen said, *She was sorry the Commons meddled with chusing and returning Knights of the Shire for Norfolk, a thing impertinent for the House to deal withal, and only belonging to the Office and Charge of the Lord Chancellor, from whom the Writs issue, and are returned.*

4 Hen. 4. The 10 of October, the Chancellor before the King declared, *the Commons had sent to the King, praying him that they might have Advice, and Communication with certain Lords about Matters of Business in Parliament, for the common good of the Realm: which Prayer Our Lord the King graciously granted, making Protestation, he would not do it of Duty, nor of Custom, but of his special Grace at this time: and therefore Our Lord the King charged the Clark of the Parliament, that this*

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Protestation should be entred on Record upon the Parliament-Roll: which the King made known to them by the Lord Say, and his Secretary; how that neither of Due nor of Custom, our Lord the King ought to grant any Lords to enter into Communication with them, of Matters touching the Parliament, but by his special Grace at this time he hath granted their Request in this Particular: upon which matter, the said Steward and Secretary made Report to the King in Parliament; that the said Commons knew well that they could not have any such Lords to commune with them, of any Business of Parliament, without special Grace and Command of the King Himself.

It hath heretofore been a question, whether it be not an Infringing, and Prejudice to the Liberties and Privileges of the House of Commons, for them to joyn in Conference with the Lords in Cases of Benevolence, or Contribution, without a Bill.

In the 35 Eliz. on Tuesday the first of March, Mr. Egerton, Attorney general, and Doct. Carey came with a Message from the Lords; their Lordships desired to put the House in Remembrance of the Speech delivered by the Lord Keeper, the first day for Consultation and Provision of Treasure, to be had aginst the great and imminent Dangers

gers of the Realm; thereupon their Lordships did look to have something from the Houses, touching those Causes before this time (and yet the Parliament had sate but three dayes, for it began *Feb. 26.*) and therefore their Lordships had hitherto omitted to do any thing therein themselves. And thereupon their Lordships desired, that according to former laudable Usages between both Houses in such like Cases, a Committee of Commons may have Conference with a Committee of Lords, touching Provision of Treasure against the great Dangers of the Realm, which was presently resolved by the whole House, and they signified to their Lordships the willing, and ready Assent of the whole House. At the Meeting, the Lords negatively affirm, not to assent to less than three Subsidies, and do insist for a second Conference. *M. Francis Bacon* yielded to the Subsidy, but opposed the joyning with the Lords, as contrary to the Privileges of the House of Commons; thereupon the House resolved to have no Conference with the Lords, but to give their Lordships most humble and dutiful Thanks with all Reverence for their favourable and courteous Offer of Conference, and to signifie that the Commons cannot in those Cases of Benevolence, or Contribution joyn

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in conference with their Lordships, without prejudice to the Liberties and Privileges of the House : and to request their Lordships to hold the Members of this House excused in their not-assenting to their Lordships said Motion for Conference, for that so to have Assented without a Bill, had been contrary to the Liberties and Privileges of this House, and also contrary to the former Precedents of the same House in like cases had. This Answer delivered to the Lords by the Chancellor of the Exchequer, their Lordships said, they well hoped to have had a Conference according to their former Request, and desir'd to see those Precedents by which the Commons seem to refuse the said Conference. But in conclusion it was agreed unto, upon the Motion of Sir *Walter Raleigh*, who moved, that without naming a Subsidy, it might be propounded in general words, to have a Conference touching the Dangers of the Realm, and the necessary Supply of Treasure to be provided speedily for the same, according to the Proportion of the Necessity.

In the 43 *Eliz.* Serjeant *Heal* said in Parliament, *he marvel'd the House stood either at the granting of a Subsidy or time of Payment, when all we have is her Majesties, and She may lawfully at her Pleasure take it from us ; and that she had as much right to all our Lands and Goods, as to any Revenue of the Crown ; and he said he could prove*
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it by *Precedents in the time of H. 3. K. John and K. Stephen.* The ground upon which this Serjeant at Law went, may be thought the same Sir *Edm. Coke* delivers in his *Institutes*, where he saith, *the first Kings of this Realm had all the Lands of England in Demesne, and the great Manors & Royalists they reserved to themselves, & of the remnant for the defence of the Kingdom enfeoffed the Barons:* from whence it appears, that no man holds any *Lands* but under a condition to defend the Realm; and upon the selfsame Ground also the Kings Prerogative is raised, as being a Preheminence, in cases of Necessity, above, & before the Law of Property, or Inheritance. Certain it is, before the Commons were ever chosen to come to Parliament, Taxes or Subsidies were raised and paid without their gift. The great and long continued Subsidy of *Dane-gelt* was without any Gift of the Commons, or of any Parliament at all, that can be proved. In the 8 *H. 3.* a Subsidy of 2 Marks in Silver upon every Knights fee was granted to the King by the Nobles, without any Commons. At the passing of a Bill of Subsidies the words of the King are, *the King thanks his loyal Subjects, accepts their good Will, & also will have it so: le Roy remercie ses loyaux Subjects, accept leur benevolence, & ausi ainsi le veult:* which last words of *ainsi le veult*, the King wills it to be so, are the only words that makes the Act of Subsidy a Law to bind every man to the Payment of it.

In the 39 *Eliz.* The Commons, by their Speaker, complaining of *Monopolies*, the Queen spake in private to the L. Keeper, who then made answer touching *Monopolies*, that *Her Majesty hoped her dutiful and loving Subjects would not take away Her Prerogative, which is the chiefest Flower in her Garland, and the principal and head Pearl in Her Crown and Diadem, but that they will rather leave that to Her Disposition.*

The second Point is, that the Free-holders, or Counties do not, nor cannot give Privilege to the Commons in Parliament. They that are under the Law cannot protect against it, they have no such Privilege themselves as to be free from Arrests, and Actions: for if they had, then it had been no Privilege, but it would be the Common Law: And what they have not, they cannot give; *Nemo dat quod non habet*, neither do the Free-holders pretend to give any such Privilege, either at their Election, or by any subsequent Act; there is no mention of any such thing in the return of the Writ; nor in the Indentures between the Sheriff, and the Free-holders.

The third Point remains, That Privilege of Parliament is granted by the King. It is a known Rule, *that which gives the Form, gives the Consequences of the Form*; the King
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by his Writ gives the very Essence, and Form to the Parliament: therefore Privileges which are but Consequences of the Form, must necessarily flow from Kings.

All other Privileges and Protections are the Acts of the King; and by the Kings Writ. Sir *Edm. Coke* saith, that the *Protection of mens Persons, Servants, and Goods, is done by a Writ of Grace from the King.* At the presentment of the Speaker of the House of Commons to the King upon the first day of Parliament, The Speaker in the Name and Behoof of the Commons, humbly craveth that his Majesty would be graciously pleased to grant them their accustomed Liberties and Privileges; which Petition of theirs, is a fair Recognition of the Primitive Grace and Favour of Kings in bestowing of Privilege, and it is a shrewd Argument against any other Title: For our Ancestors were not so ceremonious nor so full of Complement as to beg that by *Grace*, which they might claim by *Right*. And the Renewing of this Petition every Parliament argues the Grant to be but temporary, during only the present Parliament; and that they have been accustomed, when they have been accustomedly sued, or petitioned for. I will close this Point with the Judgment of King *James*, who in his Decla-

ration touching his Proceedings in Parliament 1621. resolves, that most Privileges of Parliament grew from Precedents which rather shew a Toleration than an Inheritance; therefore he could not allow of the Style, calling it their ancient and undoubted Right and Inheritance, but could rather have wished that they had said, their Privileges were derived from the Grace and Permission of his Ancestors and Him: and thereupon he concludes, He cannot with Patience endure his Subjects to use such Antimonarchicall words concerning their Liberties, except they had subjoyned, that they were granted unto them by the Grace and Favours of his Predecessors: yet he promiseth to be careful of whatsoever Privileges they enjoy by long Custom and uncontrolled and lawful Precedents.

Obfer-

OBSERVATIONS

UPON

Aristotle's Politiques,

TOUCHING

Forms of Government.

Together with

DIRECTIONS

FOR

Obedience to Governours

in Dangerous and Doubtful Times.



THE PREFACE.

IN every Alteration of Government there is something new, which none can either Divine, or Judge of, till time hath tried it: we read of many several wayes of Government; but they have all, or most of them, been of particular Cities, with none, or very small Territories at first belonging to them. At this present the Government of the Low-Countries, and of Swisserland, are not appropriated either of them to any one City, for they are compounded of several petty Principalities, which have special and different Laws and Privileges each of them; insomuch that the United Provinces, and united Cantons are but Confederacies and Leaguers, and not two entire Commonweals; Associates onely for mutual Defence. Nay, the Cantons of Swisserland are not only several Republicks, but reputed to have different Forms of Commonweals; some being said to be Aristocratically governed, and others

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others Democratically, as the Mountaineers: and some of the Cantons are Papists, and some Protestants, and some mixt of both: we do not find that any large or great Dominion or Kingdom united in one Government, and under the same Laws, was ever reduced at once to any kind of Popular Government, and not confined to the subjection of one City: This being a thing not yet done, requires the abler men to settle such a Peaceable Government as is to be desired: there being no Precedent in the case; all that can be done in it, is, at first to enquire into such other Governments, as have been existent in the World. As a Preface to such an Enquiry, the Sacred Scripture (if it be but for the Antiquity of it) would be consulted; and then Aristotle, the grand Master of Politiques; and after him the Greek and Latin Historians that lived in Popular times, would be diligently examined. To excite others of greater Abilities to an exacter Disquisition, I presume to offer a Taste of some Doctrines of Aristotle, which are usher'd in with a briefer Touch of the Holy Scriptures.

It is not probable, that any sure direction of the beginning of Government, can be found either in Plato, Aristotle, Cicero, Polybius, or in any other of the Heathen Authors, who were ignorant of the manner of the Creation of the World: we must not neglect the Scriptures, and
search

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search in Philosophers for the grounds of Dominion and Property, which are the main Principles of Government and Justice. The first Government in the World was Monarchical, in the Father of all Flesh. Adam being commanded to multiply, and People the Earth, and to subdue it, and having Dominion given him over all Creatures, was thereby the Monarch of the whole World; none of his Posterity had any Right to possess any thing, but by his Grant or Permission, or by Succession from him: the Earth (saith the Psalmist) hath he given to the Children of men: which shews, the Title comes from Fatherhood. There never was any such thing as an Independent Multitude, who at first had a natural Right to a Community: this is but a Fiction, or Fancy of too many in these dayes, who please themselves in running after the Opinions of Philosophers and Poets, to find out such an Original of Government, as might promise them some title to Liberty, to the great Scandal of Christianity, and bringing in of Atheism, since a natural freedom of mankind cannot be supposed without the denial of the Creation of Adam. And yet this conceit of Original Freedom is the only Ground upon which not only the Heathen Philosophers, but also the Authors of the Principles of the Civil Law; and Grotius, Selden, Hobs, Ashcam, and others raise, and build their Doctrines

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Principles of Government, and of the several sorts or kinds, as they call them, of Commonwealths.

Adam was the Father, King, and Lord over his Family: a Son, a Subject, and a Servant or a Slave, were one and the same thing at first; the Father had power to dispose, or sell his Children or Servants, whence we find, that at the first reckoning up of Goods in Scripture, the Man-servant, and the Maid-servant are numbred among the Possessions and Substance of the Owner, as other Goods were. As for the names of Subject, Slave, and Tyrant, they are not found in Scripture, but what we now call a Subject or a Slave, is there named no other than a Servant: I cannot learn that either the Hebrew, Greek or Latin have any proper and Original Word for a Tyrant or a Slave, it seems these are names of later invention, and taken up in disgrace of Monarchical Government.

I cannot find any one place, or Text in the Bible, where any Power or Commission is given to a People either to govern themselves, or to choose themselves Governours, or to alter the manner of Government at their pleasure; the Power of Government is settled and fixed by the Commandement of Honour thy Father; if there were a higher Power than the Fatherly, then this Commandement could not stand,

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stand, and be observed : Whereas we read in Scripture, of some Actions of the People in setting up of Kings, further than to a naked Declaration by a part of the People of their Obedience, such Actions could not amount, since we find no Commission they have, to bestow any Right; a true representation of the People to be made, is as impossible, as for the whole People to Govern; the names of an Aristocracy, a Democracy, a Commonweal, a State, or any other of like signification, are not to be met either in the Law or Gospel.

That there is a ground in Nature for Monarchy, Aristotle himself affirmeth, saying, the first Kings were Fathers of Families; as for any ground of any other Form of Government, there hath been none yet alleged, but a supposed natural Freedom of Mankind; the Proof whereof I find none do undertake, but only beg it to be granted : We find the Government of Gods own People varied under the several Titles of Patriarchs, Captains, Judges, and Kings; but in all these the Supreme Power rested still in one Person onely : We no where find any Supreme Power given to the People, or to a Multitude in Scripture, or ever exercised by them. The People were never the Lords anointed, nor called Gods, nor Crowned, nor had the Title of Nursing-Fathers, Gen. 35. 11. The Supreme Power being an indivisible Beam
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of Majesty, cannot be divided among, or settled upon a Multitude. God would have it fixed in one Person, not sometimes in one part of the People, and sometimes in another; and sometimes, and that for the most part, no where, as when the Assembly is dissolved, it must rest in the Air, or in the walls of the Chamber where they were Assembled.

If there were any thing like a Popular Government among Gods People, it was about the time of the Judges, when there was no King in Israel; for they had then some small Show of Government, such as it was, but it was so poor and beggarly, that the Scripture brands it with this note, that every man did what was right in his own eyes, because there was no King in Israel; it is not said, because there was no Government, but because there was no King; it seems no Government, but the Government of a King, in the judgment of the Scriptures could restrain men from doing what they listed; where every man doth what he pleaseth, it may be truly said, there is no Government; for the end of Government is, that every man should not do what he pleased, or be his own Judge in his own case; for the Scripture to say there was no King, is to say there was no Form of Government in Israel.

*And what the Old Testament teacheth us, we have confirmed in the New: If Saint Paul
had*

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had onely said, Let every Soul be subject to the higher Powers, and said no more: then men might have disputed, whether Saint Paul, by higher Powers, had not meant as well other Governours as Kings; or other Forms of Government, as Monarchy; but the good luck is, Saint Paul hath been his own Interpreter or Comment: for, after the general Doctrine of Obedience to be given by all men to the higher Powers, he proceeds next to charge it home, and lay it to the Conscience under pain of Damnation, and applies it to each particular mans Conscience; saying, Wilt thou not be afraid of the Power? which Power he expounds in the singular number, restraining it to one Person, saying, He is the Minister of God to thee; it is not, They are the Ministers to thee; and then again, He beareth not the Sword in vain; and then a third time in the same verse, lest thou should'st forget it, he saith, for He is the Minister of God, a Revenger to Wrath &c. upon thee: if Saint Paul had said, They are the Ministers of God, or They bear not the Sword in vain, it might be doubted, whether [they] were meant of Kings onely, or of other Governours also; but this Scruple is taken away by the Apostle himself. And as St. Paul hath expounded what he means by Higher Powers, so St. Peter also doth the like: for the self-same Word that St. Paul useth

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for Higher, in Saint Peter is translated Supreme; so that though in our English Bibles the words differ, yet in the Original they are both the same; so that St. Paul might have been Englished, Let every Soul be subject to the Supreme Power; or St. Peter might have been translated, whether to the King as to the higher; yet there is this difference, that whereas St. Paul useth the word in the Plural number, St. Peter hath it in the Singular, and with application to the King.

*It will be said, Though St. Peter make the King Supreme, yet he tells us the King is a humane Ordinance, or a Creature of the People's. But it is answered, Kings may be called an humane Ordinance, for being made of one of the People, and not by the People; and so are humane in Regard of their material Cause, not of their efficient. If St. Peter had meant that Kings had been made by the People, he must also have meant that Governours had been made by the People, for he calls the Governours as well an Ordinance of Man, as the King; for his words are, Submit your selves to every Ordinance of man for the Lord's sake, whether it be to the King as Supreme, or whether it be to Governours: but Saint Peter sheweth, that Governours are not made by the People; for he saith, they that are sent by Him (not by them) for the punishment
of*

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of Evil doers : so that the Governours are sent by the King, and not by the People : some would have sent by him, to be sent by God; but the Relative must be referr'd to the next Antecedent, which is the King, and not God. Besides, if Governours be sent by God, and Kings by the People, then Governours would be Supreme, which is contrary to Saint Peter's Doctrine; and it will follow, that the People have not the power of choosing Representatives to Govern, if Governours must be sent of God.

The safest sense of Saint Peter's words is, Submit your selves to all Humane Laws, whether made by the King, or by his Subordinate Governours. So the King may be called a Humane Ordinance, as being all one with a Speaking Law : the word in the Original is, Be subject to every humane Creation; it is more proper to call a Law made by a King a creation of an Ordinance, than the Peoples choosing or declaring of a King, a Creation of him.

But take the words in what sense soever you will, it is most evident, that Saint Peter in this place, takes no notice of any Government or Governours, but of a King, and Governours sent by him, but not by the People. And it is to be noted, That St. Peter and St. Paul, the two chief of the Apostles, wrote their Epi-
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files at such a time, when the name of a Popular Government, or of the People of Rome was at least so much in Shew and in Name, that many do believe, That notwithstanding the Emperours by strong hand usurped a Military Power ; yet the Government was for a long time in most things then in the Senate and People of Rome ; but for all this, neither of the two Apostles take any notice of any such Popular Government ; No, nor our Saviour himself, who divides all between God and Cæsar, and allows nothing that we can find for the People.

OBSERVA.



O B S E R V A T I O N S

U P O N

Aristotles Politiques,

T O U C H I N G

Forms of Government.

WHAT cannot be found in *Scripture*, many do look for in *Aristotle*; for if there be any other Form of Government besides Monarchy, he is the man best able to tell what it is, and to let us know by what name to call it, since the Greek Tongue is most happy in compounding Names, most significant to express the nature of most things: The usual terms in this Age of *Aristocracy* and *Democracy* are taken up from him to express Forms of Government most different from *Monarchy*: We must therefore make inquiry into *Aristotle* touching these two Terms.

True it is, *Aristotle* seems to make three sorts of Government, which he distinguisheth by * the Sovereignty of one man, or of a few, or of many, for the common Good.

* 'Ανάγκη δ' εἶναι κύριον ἢ ἓνα, ἢ ὀλίγους, ἢ τὰς πολλὰς πρὸς τὸ κοινὸν συμφέρον. l.3.c.7.

H 3

Ταύ-

Ταύτας μὲν ὀρθαίς
 εἰ) πολιτείαις τὰς
 πρὸς τὸ ἴδιον, ἢ τῷ ἑνὸς,
 ἢ τῷ ὀλίγων, ἢ τῷ πλή-
 θους παρεκβάσεις. Τῶν μὲν
 ἀρχῶν τὴν πρὸς τὸ κοινόν
 ἀπβλέψαν συμ-
 φέρον, βασιλείαν. &c.

These (he saith) are right
 or perfect Governments, but
 those that are for the private
 Good of one, or of a few, or
 of a Multitude, are Trans-
 gressions. The Government
 of a Monarchy for the Com-
 mon Good, he calls a King-
 dom. The Government
 of a few more than one, an Aristocratic; either because
 the best men govern, or because it is for the best of the
 governed: when a Multitude governs for the common
 Good, it is called by the common name of all Govern-
 ments, a POLITIE. It is possible that one or a
 few may excell in Vertue, but it is difficult for many to
 excell in all Vertue, except in Warlike Affairs, for this
 is natural in a Multitude; therefore, in this sort of Go-
 vernment their principal Use is to war one for another,
 and to possess the Arms or Ammunition. The Transgres-
 sions of Government before spoken of, are these: Ty-
 ranny is the Transgression of the Kingdom; and De-
 mocratie is the Transgression of the Politie. For Tyranny
 is a Monarchy for the Benefit of the Monarch; the Oligar-
 chy, for the Profit of the Rich; the Democratie for the Be-
 nefit of the Poor. None of these are for the Common
 Good.

Here Aristotle, if he had stood to his own Princi-
 ples, should have said an Oligarchy should be for the
 Benefit of a few, and those the best; and not for the Benefit
 of the rich: and a Democratie for the Benefit of many,
 and not of the Poor only; for so the Opposition ly-
 eth; but then Aristotle saw his Democratie would
 prove to be no Transgression, but a perfect Politie, and
 his

his *Oligarchy* would not be for the Benefit of a few, and those the best men; for they cannot be the best men, that seek onely their private Profit. In this Chapter, the mind of *Aristotle* about the several kinds of Government, is clearliest delivered, as being the foundation of all his Books of Politiques, it is the more necessary to make a curious Observation of these his Doctrines. In the first place, he acknowledgeth the Government of *one man*, or of a *Monarchy*, and that is a perfect Form of Government.

Concerning Monarchy, *Aristotle* teacheth us the beginning of it; for, saith he, the *first Society made of many Houses is a Colony, which seems most naturally to be a Colony of Families, or Foster-bretheren of Children and Childrens children. And therefore at the beginning Cities were, and now Nations, under the Government of Kings; the Eldest in every house is King, and so for Kindred sake it is in Colonies.

*Μάλιστα ὅ καὶ φύσιν
 ὁικεὶν ἢ κώμην ἀπικία
 οἰκείας ἐξ ὧν καλεῖσθαι
 νεσ. ὁμογάλακτας παῖδας
 τε καὶ παίδων παῖδας. Διό
 καὶ τὸ πρῶτον ἐβασίλευ-
 οντο αἱ πόλεις, καὶ νῦν ἐτι
 παῖ ἔθνη. l. i. c. 2. πᾶ-
 σα γὰρ οἰκία βασιλεύε-
 ται ὑπὸ τοῦ πρεσβυτά-
 τος, ὥστε καὶ αἱ ἀπικίαι
 ἀπὸ τῶν συγγενείων.

Thus he deduced the Original of Government from the Power of the Fatherhood, not from the Election of the People. This it seems he learnt of his Master *Plato*, who in his third Book of Laws affirms, that the true and first Reason of Authority is, that the Father and Mother, and simply those that beget and ingender, do command and rule over all their Children. *Aristotle* also tells us from *Homer*,

(a) Θεμισδίδει ὃ ἕκα-
στὸ παίδων ἢ δ' α'-
λόγων.

(a) that every man gives *Laws*
to his *Wife* and *Children*.

(b) Ἀνάγκη γὰρ ὡς
ἡ τῆς πρώτης καὶ δει-
οτάτης παρέκβασις
ἐστὶ χειρίστην.

In the fourth Book of his
Politiques, cap. 2. he gives to
Monarchy the Title of the (b)
first and divinest sort of Go-
vernment, defining Tyranny to
be a Transgression from the first,
and divinest.

(c) Τῶν ὃ βελτί-
στην ἢ βασιλεία, χει-
ρίστη ὃ τιμωρεαία.

Again, Aristotle in the eighth
Book of his *Ethicks*, in the 12
Chapter, saith, That of (c) the
right Kinds of Government, a
Monarchy was the best, and a
popular Estate the worst.

(d) Περὶ ὃ τὸ παμ-
βασίλειας καλεμέ-
νης, αὐτὴ δ' ἐστὶ καὶ
ἣν ἀρχαί πάντων
κατὰ τὴν αὐτῆς βέλη-
σιν ὁ βασιλεὺς· ὁ μὲν
γὰρ κατὰ νόμον λεγόμε-
νος βασιλεὺς, ἐκ ἑστῶτος αἰδίου, καὶ ὡς περ εἴπομεν
πολιτείας.

Lastly, in the third Book
of his *Politiques*, and the six-
teenth Chapter concerning
Monarchy, he saith, that (d)
A perfect Kingdom is that
wherein the King rules all things
according to his own Will; for
he that is called a King accord-
ing to the Law makes no kind of
Government.

Secondly, he saith there is a Government of a few
men, but doth not tell us how many those few men
may, or must be; only he saith they must be more than
one man, but how many, that he leaves uncertain.

This perfect Government of a few, any man
would think Aristotle should have called an *Oligarchy*,
for

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for that this word properly signifies so much; but in stead of the Government of a few, *Aristotle* gives it a quite other name, and terms it an *Aristocracy*, which signifies the Power of the best; the reason why it is called an *Aristocracy*, saith *Aristotle*, is for that there the best men govern, or (because that is not always true) for that it is for the best of the governed; by this latter reason any Government, and most especially a *Monarchy*, may be called an *Aristocracy*, because the End of *Monarchy* is for the best of the governed, as well as the End of an *Aristocracy*; so that of these two Reasons for calling the Government of a few an *Aristocratie*, the first is seldome true; and the latter is never sufficient to frame a distinction. This *Aristotle* himself confesseth in his next

Chapter, saying (a) that the Causes aforesaid do not make a Difference, and that it is Poverty and Riches, and not Few, and Many, that makes the Difference between an *Oligarchy*, and *Democracy*; there must be an *Oligarchy* where rich men rule, whether they be few or many: and wheresoever the Poor

have the Sovereignty, there must be a *Democracy*.

Now if *Aristotle* will allow Riches and Poverty to make a Difference between an *Oligarchy* and a *Democraty*: these two must likewise make the Difference between an *Aristocracy* and a *Polity*: for the only Difference *Aristotle* makes between them is, in their Ends, and not in their Matter; for the same few men may make an *Aristocracy*, if their End be the Common Good; and they may be an *Oligar-*
chy

(a) Διὸ καὶ ἐ συμ-
βαίνει τοῖς ῥηθείαις
αἰτίας γίνεσθαι διαφο-
ρὰς, ὥς ἡ διαφέρουσιν
ἢ τε δημοκρατία καὶ ἢ
ὀλιγαρχία ἀλλήλων
πενία καὶ πλεῖσις ὄντι,
&c. lib. 3. c. 8.

chy, if they aim only at their private Benefit.

Thus is *Aristotle* distracted and perplexed how to distinguish his *Aristocratie*, whether by the smallness of their Number, or by the Greatness of their Estates.

Lib. 1. c. 8. Nay if we look into *Aristotles Rhetoriques*, we shall find a new Conceit, not only about *Aristocratie*, but also about the sorts of Government: for whereas he has taught us in his *Politiques*, that there be three sorts of right or perfect Government, and as many sorts of wrong, which he calls Transgressions or Corruptions, he comes in his *Rhetoriques*, and teacheth us that there be four sorts of Government.

(a) ἔστι δὲ δημοκρατία πολιτεία ἐν ᾗ κλήρω διανέμονται αἱ ἀρχαί· ὀλιγαρχία δὲ ἐν ᾗ οἱ ἀπὸ πημεμένων ἀριστοκρατία δὲ ἐν ᾗ οἱ κατὰ παιδείαν.

(b) Μοναρχία δὲ ἔστι κατὰ τὸ νομῶν ἐν ᾗ εἷς ἀπάντων κύριός ἐστι.

1 (a) A Democratie, where Magistracies are distributed by Lots.

2. In an Oligarchy by their Wealth.

3. In an Aristocratie by their Instructions in the Law. It is necessary for these to appear the best from whence they have their name.

4. (b) A Monarchy according to the name, wherein one is Lord over all.

Here we see *Aristocratie* is not distinguished by smallness of Number, nor by Riches, but by Skill in the Laws; for he saith those that are instructed in the Laws govern in an *Aristocratie*: οἱ γὰρ ἐμμεμενηκότες ἐν τοῖς νομίμοις ἐν τῇ Ἀριστοκρασίᾳ ἀρχοῦσιν. a Point not dreamt of in his *Politiques*; by which it seems *Aristotle* himself did not know well what he would have

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to be an *Aristocratie*. And as he cannot teach us truly what an *Aristocratie* is, so he is to tell us where any *Aristocratie* ever was; even himself seems to doubt, whether there be any such Form of Government, where he saith in his third Book of *Politiques*, cap. 5.

(a) *It is impossible for any Mechanical man to be a Citizen in an Aristocratie, if there be any such Government as they call Aristocratical.*

(a) Εἴ τις ἐστὶν ἡν καλεῖσιν ἀριστοκρατικῶν.

His [if] makes him seem to doubt of it; yet I find him affirm that the Commonwealth of *Carthage* was *Aristocratical*; he doth not say it was an *Aristocratie*, for he confesseth it had many of the Transgressions which other Commonwealths had, and did incline either to a *Democratie* or an *Oligarchy*.

(b) *The Government of Carthage did transgress from an Aristocratie to an Oligarchy.*

(b) Παρεκβαίνει ὅτι τῆς ἀριστοκρατίας ἢ πλείους τῶν

Καρθηδονίων μέλιστα πρὸς τὸ ὀλιγαρχίαν. L. 2. c. 11.

And he concludes, that if by Misfortune there should happen any Discord among the *Carthaginians* themselves, there would be no Medicine by Law found out to give it Rest; wherein me-thinks *Aristotle* was a kind of Prophet, for the Discords between the Citizens of *Carthage*, were the main Cause that *Hannibal* lost not only *Italy*, but *Carthage* it self.

By these few Collections we may find how uncertain *Aristotle* is in determining what an *Aristocratie* is, or where or when any such Government was; it may justly be doubted whether there

there ever was, or can be any such Government.

Let us pass from his *Aristocracy*, to his third sort of perfect or right Government; for which he finds no particular Name, but only the common Name of all Government, *Politia*: It seems the *Greeks* were wonderfully to seek, that they of all men should not be able to compound a name for such a perfect Form of Government; unless we should believe that they esteemed this kind of Commonwealth so superlatively excellent, as to be called, καὶ ἐξοχὴν, the Government of all Governments, or *Polity* of *Polities*.

But howsoever *Aristotle* in his Books of *Politiques* vouchsafe us not a Name, yet in his Books of *Ethiques* he affirmeth it may very properly be called
 (a) Τείτη δ' ἡ ἀπὸ πημεύων, ἢ πημερευτικὴ λέγειν οἰκείον φαίνεται. L. 8. c. 12.

(a) a timocratical Government, where Magistrates are chosen by their Wealth: But why *Aristotle* should give it such a Name I can find no Reason; for a *Polity* by his Doctrine is the

Government of many, or of a Multitude, and the Multitude he will have to be the poorer sort, inso-much that except they be poor, he will not allow it to be the Government of a Multitude, though they be never so many; for he makes Poverty the truest Note of a popular Estate; and as if to be Poor and to be Free were all one, he makes Liberty likewise to be a Mark of a popular Estate; for in his 4th Book, and 4th

(b) Ὅτι δὴμὸς ἐστὶν ἴταν ἐλεύθεροι ὡς οἱ ὅταν οἱ πλούσιοι.

Chapter, he resolves, That (b) a popular State is where free men governe, and an Oligarchy where rich men rule; as if rich men could not be free men: Now how Magistrates should be cho-

chosen for their Wealth, ἀπὸ τιμωμάτων, among all poor men is to me a Riddle.

Here I cannot but wonder why all our *modern Politicians*, who pretend themselves *Aristotelians*, should forsake their great Master, and account a *Democracy* a right or perfect Form of Government, when *Aristotle* brands it for a Transgression, or a depraved, or corrupted manner of Government. They had done better to have followed *Aristotle*, who (though other *Grecians* could not, yet he) could find out the name of a *Timocracy* for a right popular Government: But, it may be, our *Politicians* forbear to use the word *Timocracy*, because he affords an ill Character of it, saying, That of all the right Kinds of Government a *Monarchy* was the best, and a *Timocracy* the worst; βελτίστη ἡ βασιλεία, χειρίστη ἡ τιμοκρατία. Yet afterwards *Aristotle* in the same Chapter makes amends for it, in saying, a *Democracy* is the least vicious, because it doth but a little Transgress from a *Timocracy*.

But not to insist longer on the name of this nameless Form of Government, let Inquiry be made into the thing it self, that we may know what *Aristotle* saith is the Government of many, or of a Multitude, for the Common Good.

This *Many*, or *Multitude* is not the whole People, nor the major part of the People, or any chosen by the People to be their Representatives. No, *Aristotle* never saith, or meaneth any such thing; for he tells us (a) (a) Ἡ δὲ βελτίστη πό-
the best City doth not make λισ ἐπιήσκει βάνου-
any Artificer, or Handicrafts- σον πολίτῳ. L. 31.5.
man a Citizen.

And if these be excluded out of the Number of Citizens, there will be but a few left in every City
to

to make his *Timocratical* Government, since Artificers or Mercenary men make far the greatest part of

a City; or to say (a) a City is a Community of free men, and yet to exclude the greatest part of the Inhabitants from being Citizens, is but a Mockery of

Freedom; for any man would think that a City being a Society of men assembled to the End to live well, that such men without whom a City cannot subsist, and who perform necessary Works, and minister to all in Publick, should not be barred from be-

ing Citizens, yet says Aristotle, (b) all those are not to be deemed Citizens without whom a City cannot subsist, except they abstain from necessary Works; L. 3. c. 5.

(c) Οὐ γὰρ οἷόν τ' ἐπιτηδεύσαι τὰ τῆς ἀρετῆς ζῶντα βίον βάνανυσον ἢ δηλικόν. for he resolves it (c) impossible for him to exercise the Work of Vertue, that useth a mechanical or mercenary Trade.

And he makes it one of his Conclusions, That (d) in ancient times among some men, no publick Workman did partake of the Government, untill the worst of Democracies were brought in. L. 3. c. 4.

Again Aristotle will have his best popular Government consist of Free men, and accounts the poorer sort of People to be free men; how then will he exclude poor Artificers, who work for the Publick, from participating of the Government?

Further it is observable in *Aristotle*, That, quite contrary to the Signification of the Greek names, the Government of a Multitude may be termed an *Oligarchy* if they be rich, and the Rule of a few a *Democratie* if they be poor and free.

After much Incertainty of the Nature of this Politique Government, which wants a name; *Aristotle* at last resolves that this general Commonweal or *Politia* is compounded of a *Democratie* and *Oligarchy*;

for, (a) to speak plainly, a Polity

is a Mixture of a *Democratie* and (a) Ἐστὶ γὰρ ἡ πολιτεία, ὡς ἀπλῶς

εἰπεῖν, μίξις ὀλιγαρχίας καὶ δημοκρατίας. L.4. c.8.

That is, one perfect Form is made of two imperfect ones; this is rather a confounding than compounding of Government, to patch it up of two corrupt ones, by appointing an *Oligarchical Penalty* for the rich Magistrates that are chosen by *Election*, and a *Democratical Fee* for the poor Magistrates that are chosen by *Lot*.

Lastly it is to be noted, That *Aristotle* doth not offer to name any one City or Commonweal in the World, where ever there was any such Government as he calls a *Politie*: for him to reckon it for a perfect Form of Government, and of such Excellency as to carry the Name from all other, and yet never to have been extant in the World, may seem a Wonder; and a man may be excused for doubting, or for denying any such Form to be possible in Nature, if it cannot be made manifest what it is, nor when, nor where it ever was.

In Conclusion, since *Aristotle* reckons but three kinds of perfect Government, which are, First, a

Monar-

chy of one; Secondly, an *Aristocracy* of a few; Thirdly, a *Polity* of a *Multitude*; and if these two latter cannot be made good by him: there will remain but one right Form of Government only, which is *Monarchy*: And it seems to me, that *Aristotle* in a

(a) καὶ ἡ πρώτη ἡ
πολιτεία ἐν τοῖς
Ἕλλησιν ἐγένετο, καὶ
τὰς βασιλείας ἐκ
τῆς πολεμίας.
L. 4. c. 13.

manner doth confess as much, where he informs us (a) that the first *Commonweal* among the *Grecians*, after *Kingdoms*, was made of those that waged *War*: meaning that the *Grecians*, when they left to be governed by *Kings*, fell to be governed by an *Army*: their

Monarchy was changed into a *Stratocracy*, and not into an *Aristocracy* or *Democracy*: for if *Unity* in Government, which is only found in *Monarchy*, be once broken, there is no Stay or Bound, untill it come to a constant standing *Army*; for the *People* or *Multitude*, as *Aristotle* teacheth us, can excell in no *Vertue* but *Military*, and that *That is natural to them*, and

(b) Πλείους δ' ἤδη
χαλεπὸν ἀκρεβῶδες
πρὸς πᾶσαν ἀρετὴν,
ἀλλὰ μέγιστα τὴν
πολεμικὴν αὐτὴ
ἔν πληθει γίγνε-
ται· διόπερ καὶ ταύ-
τῃ τὴν πολιτείαν

therefore in a popular Estate, (b) The *Sovereign Power* is in the *Sword*, and those that are possessed of the *Arms*. So that any Nation or Kingdom that is not charged with the keeping of a *King*, must perpetually be at the Charge of paying and keeping of an *Army*.

κυριώτατον τὸ προπολεμεῖν, καὶ μετέχουσιν αὐτῇ οἱ κεκτημένοι τὰ ὅπλα. L. 3. c. 7.

These brief Observations upon *Aristotle's* perfect Forms of Government, may direct what to judge of those corrupted or imperfect Forms which he mentions; for *rectum est index sui & obloqui*, and he reckons them to be all one in Matter and Form, and to differ only in their End: the end of the Perfect Forms being for the Good of the Governed; and of the Imperfect, for the benefit only of the Governours. Now since *Aristotle* could not tell how to define or describe his Right or Perfect Forms of Government, it cannot be expected he can satisfy us concerning those he calls Imperfect: yet he labours and bestirs himself mainly in the business; though to little purpose; for howsoever the Title of his Book be Πολιτικῶν, of *Politiques*, and that he mentions πολιτεία for a special Form of Government, which hath the common name of a *Policy*: yet when he comes to dispute in particular of Government, he argues only about *Democracies* and *Oligarchies*, and therein he is copious, because only those which he calls corrupt Forms of Governments were common in *Greece* in his dayes. As for an *Aristocracy*, or a *Policy* which he mentions, they are only Speculative Notions, or Airy Names, invented to delude the World, and to persuade the People, that under those quaint Terms, there might be found some subtle Government, which might at least equal, if not excell *Monarchy*: And the Inventers of those fine Names were all but Rebels to *Monarchy*, by *Aristotles* confession, where he saith, the first *Commonweals* of *Greece* after *Kings* were left, were made of those that waged War. l. 4. c. 13.

As *Aristotle* is irresolute to determine what are truly Perfect *Aristocracies* and *Policies*, so he is to
I seek

seek in describing his imperfect Forms of Government, as well *Oligarchies* as *Democracies*, and therefore he is driven to invent several sorts of them, and to confound himself with Subdivisions: we will alledge some of his words. *The cause why there be many kinds of Commonweals is, for that there are many parts of every City. Sometimes all these parts are in a Commonweal, sometimes more of them, sometimes fewer: whence it is manifest, that there are many Commonweals differing from each other in kind: because the parts of them differ after the same manner. For a Commonweal is the Order of Magistrates distributed, either according to the Power of them that are partakers of it, or according to some other common equality belonging to Poor and Rich, or some other thing common to both. It is therefore necessary, that there be so many Commonweals as there are Orders, according to the excellencies and differences of Parts. But it seemeth principally there are but two chief kinds of Commonweals; the Democracy and the Oligarchy: for they make the Aristocracy a branch of Oligarchy, as if it were a kind of Oligarchy; and that other which is properly a Policy, to be a branch of Democracy. So they are wont to esteem of Commonweales; but it is both truer and better; that there being two right Forms, or one, that all the other be transgressions. Here we find Aristotle of several minds, sometimes he is for many Commonweales, sometimes for two, or sometimes for one. As for his many Commonweals, if he allow them according to the several parts of a City, he may as well make three thousand kinds of Commonweals, as three: if two Artificers and three Souldiers should govern, that should be one kind of Commonweal: if four Husband-*
band-

bandmen, and five Merchants, that would be a second fort; or six Taylors, and ten Carpenters, a third fort, or a dozen Saylors, and a dozen Porters, a fourth; and so in *infinitum*, for *Aristotle* is not resolved how many parts to make of a City, or how many Combinations of those Parts; and therefore in his Reckoning of them, he differs from himself, sometimes makes more, sometimes fewer Parts: and oft concluding at the end of his Accompt with *et cetera's*: and confessing that one and the same man may act several Parts; as he that is a Souldier, may be a Husbandman & an Artificer: and in his fourth Book and fourth Chapter, he seems to reckon up eight parts of a City, but in the Tale of them, he misses or forgets the sixth. 1. He names the *Plowman*. 2. The *Artificer*. 3. The *Tradesman*, or *Merchant*. 4. The *mercenary Hireling*. 5. The *Souldier*, (here *Aristotle* falls foul upon *Plato*, for making but four parts of a City. 1. *The Weaver*. 2. *The Plowman*. 3. *The Taylor*. 4. *the Carpenter*. Afterwards, as if these were not sufficient, he addeth the *Smith*, and the *Freeder of necessary Cattle*, the *Merchant*, and the *ingrosser* or *Retayler*) whilest *Aristotle* was busie in this Reprehension of *Plato*, he forgets himself, and skips over his sixth part of a City, and names the 7. *rich men*, 8. *the Magistrates*. In the same Chapter, he offers at another Division of the Parts of a City or Commonwealth, first dividing it into a *Populacy*, and *Nobility*. The People he divides first into *Husbandmen*. 2. *Into Artificers*. 3. *Into Merchants*, or *those that use Buying or Selling*. 4. *Into those that frequent the Seas*, of whom *some follow the War*, others seek for *Gain*, some are *Carriers* or *Transporters*, others *Fishermen*. 5. *Handicraftsmen that possess so little goods, that they*

cannot be idle. 6. Those that are not free on both sides, and any other such like Multitude of People. The kinds of Noblemen are distinguished by Riches, by Lineage, by Vertue, by Learning, and other such like things.

That there may be more Parts of a Commonweal than are here numbred; *Aristotle* confesseth or supposeth; and of a Multitude of Parts, and of a Multitude of Mixtures of such Parts may be made a World of Forms of *Oligarchies* and *Democraties*.

This Confusion of the Parts and Kinds of Commonweals drove *Aristotle* rather to rest upon the Division of *Rich* and *Poor*, for the main parts of a Commonweal, than any other. The distinction of a *Few* and of a *Multitude*, or the whole People, might seem more proper to distinguish between an *Oligarchy* and a *Democracy*; but the Truth is, *Aristotle* looking upon the Cities of *Greece*, and finding that in every of them, even in *Athens* it self, there were many of the People that were not allowed to be Citizens, and to participate in the Government, and that many times He was a Citizen in one sort of Government, who was not a Citizen in another, and that Citizens differed according to every Commonweal; he considered that if he should place a Right in the whole People, either to govern, or to chuse their Form of Government, or the Parties that should govern: he should hereby condemn the Government of all the Cities in *Greece*, and especially of *Aristocracy*, which, as he saith, *allows no Artificer to be a Citizen*; and besides, he should thereby confute a main Principle of his own *Politiques*, which is, that *some men are born slaves by Nature*; which quite contradicts the Position, that *all men are born equal and free*; and therefore *Aristotle* thought it

it fitter to allow all imaginable Forms of Government, that so he might not disparage any one City, than to propound such a Form as might condemn and destroy all the rest.

Though *Aristotle* allow so many several Forms of corrupted Governments; yet he insists upon no one Form of all those that he can define or describe, in such sort, that he is able to say that any one City in all *Greece* was governed just according to such a Form; his diligence is only to make as many Forms as the giddy or inconstant Humour of a City could happen upon; he freely gives the People Liberty to invent as many Kinds of Government as they please, provided he may have Liberty to find Fault with every one of them; it proved an easier Work for him to find Fault with every Form, then to tell how to amend any one of them; he found so many Imperfections in all sorts of Commonwealths, that he could not hold from reproving them before ever he tells us what a Commonwealth is, or how many sorts there are; and to this Purpose he spends his whole second Book in setting out, and correcting the chief Commonwealths of *Greece*, and among others the *Lacedemonian*, the *Cretan*, and *Carthaginian* Commonwealths; which three he esteems to be much alike, and better than any other, yet he spares not to lay open their Imperfections, and doth the like to the *Athenian*; wherein he breaks the Rule of Method, by delivering the Faults of Commonwealths, before he teach us what a Commonwealth is; for in his first Book, he speaks only of the Parts of which a City, or a Commonwealth is made, but tells us not what a City or Commonwealth is, untill he come to his third Book, and there in handling the

sorts of Government, he observes no Method at all, but in a disorderly way, flies backward and forward from one sort to another: and howsoever there may be observed in him many Rules of *Policy* touching Government in general, yet without Doubt where he comes to discourse of particular Forms, he is full of Contradiction, or Confusion, or both: it is true, he is brief and difficult, the best Right a man can do him, is to confess he understands him not; yet a diligent Reader may readily discern so many Irregularities and Breaches in *Aristotle's* Books of *Politiques*, as tend to such Distraction or Confusion, that none of our new Politicians can make Advantage of his Principles, for the Confirmation of *an original Power by Nature in the People*, which is the only Theme now in Fashion: For *Aristotle's* Discourse is of such Commonweals as were founded by particular Persons, as the *Chalcedonian* by *Phaleas*, the *Milesian* by *Hippodamas*, the *Lacedemonian* by *Lycurgus*, the *Cretan* by *Minos*, the *Athenian* by *Solon*, and the like: But the natural Right of the People to found, or elect their Kind of Government is not once disputed by him: It seems the *underived Majesty of the People*, was such a metaphysical piece of Speculation as our grand Philosopher was not acquainted with; he speaks very contemptuously of the Multitude in several Places, he affirms that the *People are base or wicked Judges in their own Cases*,
 Lib. 3. c. 9. οἱ πλείστοι φαῦλοι κριταὶ περὶ τῶν οἰκείων and that many of them differ nothing from beast.
 Lib. 3. c. 11. τί διαφέρουσιν ἔνιοι τῶν δυνάτων; and again he saith, *The Common People or Freemen are such as are neither Rich, nor in Reputation for Vertue, and it is not safe to commit to them great Governments,*
 for,

for, by reason of their Injustice and Unskilfulness, they would do much Injustice, and commit many Errours; and it is pleasanter to the multitude to live Disorderly, than Soberly, ἥδιον γὰρ τοῖς πολλοῖς τὸ ζῆν ἀτά-
κτως ἢ τὸ σωφρόνως. If Aristotle had believed Lib.6.c.4.
a Publick Interest to have been in the People, to the enabling them to be their own carvers in point of Government, he would never have entangled himself with such intricate and ambiguous Forms of Commonweals, as himself cannot tell how to explain, nor any of his Commentators how to understand, or make Use of.

This one Benefit I have found by Reading Aristotle, that his Books of *Politiques* serve for an admirable Commentary upon that Text of Scripture, which saith, *In those dayes there was no King in Israel; every man did that which was right in his own eyes.* For he grants a liberty in every City, for any man, or multitude of men, either by Cunning, or Force, to set up what Government they please; and he will allow some name or other of a Commonweal, which in effect is to allow every man to do what he lists, if he be able; hence it is, that by the confession of Aristotle, the first Commonweals in Greece, after Kings were given over, were made of those that waged War; those several kinds of Commonweals, were all summed up into the government of an Army; for (a) it is, saith Aristotle, in their power, who manage Arms to continue, or not continue the Form of Government, whereby the Estate is governed, which is nothing else but a Stratocratie, or Military Government. We cannot much blame

Οἱ γὰρ τῶν ὀπλῶν
κύριοι, καὶ μέλει
καὶ μὴ μένειν κύ-
ριοι τῷ πολι-
τείᾳ. L.7.c.9.

Aristotle for the Incertainty, and Contrariety in him about the sorts of Government, if we consider him as a Heathen; for it is not possible for the Wit of man to search out the first Grounds or Principles of Government, (which necessarily depend upon the original of Property) except he know that at the Creation one man alone was made, to whom the Dominion of all things was given, and from whom all men derive their Title. This Point can be learnt only from the Scriptures: as for the imaginary Contract of People, it is a Fancy not improbable only, but impossible, except a multitude of men at first had sprung out, and were engendred of the Earth, which *Aristotle* knows not whether he may believe, or no : If Justice (which is to give every man his Due) be the End of Government, there must necessarily be a Rule to know how any man at first came to have a Right to any thing to have it truly called his. This is a Point *Aristotle* disputes not ; nor so much as ever dreamt of an original Contract among People : he looked no farther in every City, than to a Scambling among the Citizens, whereby every one snatcht what he could get: so that a violent Possession was the first, and best Title that he knew.

The main Distinction of *Aristotle* touching perfect or Right Forms of Government from those that are imperfect or corrupt, consists solely in this Point, that where the Profit of the governed is respected there is a right Government, but where the Profit of the Governours is regarded, there is a Corruption or Transgression of Government. By this it is supposed by *Aristotle*, that there may be a Government only for the Benefit of the Governours; this

this Supposition to be false, may be proved from *Aristotle* himself; I will instance about the Point of Tyranny.

Tyranny, saith *Aristotle*, (a) is a despotical or masterly Monarchy, now he confesseth, that (b) in truth the masterly Government is profitable both to the Servant by Nature, and the Master by Nature, and he yields a solid reason for it, saying, (c) It is not possible, if the Servant be destroyed, that the Mastership can be saved; whence it may be inferred, That if the Masterly Government of Tyrants cannot be safe without the Preservation of them whom they govern, it will follow that a Tyrant cannot govern for his own Profit only: and thus his main Definition of Tyranny fails, as being grounded upon an impossible Supposition by his own Confession. No Example can be shewed of any such Government that ever was in the World, as *Aristotle* describes a Tyranny to be; for under the worst of Kings, though many particular men have unjustly suffered, yet the Multitude, or the People in general have found Benefit and Profit by the Government.

It being apparent that the different kinds of Government in *Aristotle*, arise onely from the difference of the number of Governours, whether one, a few, or many: there may be as many several Forms of Governments as there be several Numbers, which are infinite; so that not onely the several Parts of a City or Commonweal, but also the several Numbers of such Parts may cause multiplicity of Forms of Government by *Aristotle's* Principles.

It

It is further observable in Assemblies, that it is not the whole Assembly, but the major part onely of the Assembly that hath the Government; for *that which pleaseth the most, is alwayes ratified*, saith Aristotle, *lib. 4. c. 4.* by this means one and the same Assembly may make, at one Sitting, several Forms of Commonweals, for in several Debates and Votes the same number of men, or all the self-same men do not ordinarily agree in their Votes; and the least Disagreement, either in the Persons of the men, or in their number, alters the Form of Government. Thus in a Commonweal, one part of the Publick Affairs shall be ordered by one Form of Government, and another part by another Form, and a third part by a third Form, and so *in infinitum*. How can that have the Denomination of a Form of Government, which lasts but for a moment onely, about one fraction of Business? for in the very instant, as it were in the Twinkling of an eye, while their Vote lasteth, the Government must begin and end.

To be governed, is nothing else but to be obedient and subject to the Will or Command of another; it is the Will in a man that governs; ordinarily mens Wills are divided according to their several Ends or Interests; which most times are different, and many times contrary the one to the other, and in such cases where the Wills of the major part of the Assembly do unite and agree in one Will, there is a *Monarchy* of many Wills in one, though it be called an *Aristocracy* or *Democracy*, in regard of the several Persons; it is not the many Bodies, but the one Will or Soul of the Multitude
that

that governs. (a) *Where one is set up out of many, the People becometh a Monarch, because many are Lords, not separately, but altogether as one; therefore such a People as if it were a Monarch, seeks to bear Rule alone* L. 4. c. 4.

ἐκαστος, ἀλλὰ πάντες. ὁ δὲ ἐν τοιαύτῳ δήμῳ ἄτε μόναρχον ὧν ζητεῖ μοναρχεῖν.

(a) Μόναρχος γὰρ ὁ δῆμος γίνεται, σύνθετον εἰς ἓκ πολλῶν οἱ γὰρ πολλοὶ κύριοι εἰσὶν ἕκ ὡς

τοιαύτῳ δήμῳ

It is a false and improper Speech to say that a whole Multitude, Senate, Council, or any Multitude whatsoever doth govern where the major part only rules; because many of the Multitude that are so assembled, are so far from having any part in the Government, that they themselves are governed against and contrary to their Wills; there being in all Government various and different Debates and Consultations, it comes to pass oft-times, that the major part in every Assembly, differs according to the several Humours or Fancies of men; those who agree in one Mind, in one Point, are of different Opinions in another; every Change of Business, or new Matter begets a new major part, and is a Change both of the Government and Governours; the Difference in the Number, or in the Qualities of the Persons that govern, is the only thing that causes different Governments, according to *Aristotle*, who divides his Kinds of Government to the Number of one, a few, or many. As amongst the *Romans* their Tribunitial Laws had several Titles, according to the Names of those Tribunes of the People, that prefer'd and made them. So in other Governments, the Body of their Acts and Ordinances,

ces, is composed of a Multitude of momentary Monarchs, who by the Strength and Power of their Parties or Factions are still under a kind of a civil War, fighting and scratching for the legislative miscellany, or medly of several Governments. If we consider each Government according to the nobler Part of which it is composed, it is nothing else but a Monarchy of Monothelites, or of many men of one Will, most commonly in one Point only: but if we regard only the baser part, or Bodies of such Persons as govern, there is an interrupted Succession of a Multitude of short-lived Governments, with as many Intervalls of Anarchy; so that no man can say at any time, that he is under any Form of Government; for in a shorter time than the word can be spoken, every Government is begun and ended. Furthermore in all Assemblies, of what Quality soever they be, whether *Aristocratical* or *Democratical*, as they call them, they all agree in this one Point, to give that honourable Regard to Monarchy, that they do interpret the major, or prevailing part in every Assembly to be but as one man, and so do feign to themselves a kind of Monarchy.

Though there be neither Precept nor Practice in Scripture, nor yet any Reason alledged by *Aristotle* for any Form of Government, but only Monarchy; yet it is said that it is evident to common Sense, that of old time *Rome*, and in this present Age *Venice*, and the *Low-Countries*, enjoy a Form of Government different from Monarchy: Hereunto it may be answered, That a People may live together in Society, and help one another; and yet not be under any Form of Government;

ment; as we see Herds of Cattel do, and yet we may not say they live under Government. For Government is not a Society only to live, but to live well and vertuously. This is acknowledged by Aristotle, who teacheth that

(a) the End of a City, is to live blessedly and honestly. Political Communities are ordained for honest Actions, but not for living together only.

(a) Τέλος πόλεως τὸ εὖ ζῆν δὲ δαμόνως καὶ καλῶς. τῶν καλῶν πράξεων χάριν δεῖν εἶναι τὴν πολιτικὴν κοινωνίαν, ἀλλὰ ἔτι τὴν συζῆν.

Now there be two things principally required to a blessed and honest life: Religion towards God, and Peace towards men: that is, a quiet and peaceable Life in all Godliness and Honesty, 1 Tim. 2. 2. Here then will be the Question, Whether Godliness and Peace can be found under any Government but Monarchy, or whether Rome, Venice, or the Low-Countries did enjoy these under any popular Government. In these two Points, let us first briefly examine the Roman Government, which is thought to have been the most glorious.

For Religion, we find presently after the Building of the City by Romulus, the next King, Numa, most devoutly established a Religion, and began his Kingdom with the Service of the Gods; he forbade the Romans to make any Images of God, which Law lasted and was observed 170 Years, there being in all that time no Image or Picture of God, in any Temple or Chappel of Rome; also he erected the Pontifical Colledge, and was himself the first Bishop or Pontifex; These Bishops

shops were to render no Account either to the Senate or Commonalty. They determined all Questions concerning Religion, as well between Priests as between private men: They punished inferiour Priests, if they either added or detracted from the established Rites, or Ceremonies, or brought in any new thing into Religion. The chief Bishop, *Pontifex Maximus*, taught every man how to honour and serve the Gods. This Care had Monarchy of Religion.

But after the Expulsion of Kings, we do not find during the Power of the People, any one Law made for the Benefit or Exercise of Religion: there be two Tribunitian Laws concerning Religion, but they are meerly for the Benefit of the Power of the People, and not of Religion. *L. Papirius*, a Tribune, made a Law called *Lex Papiria*, that it *should not be lawful for any to consecrate either Houses, Grounds, Altars, or any other things without the Determination of the People*. *Domitius Ænobarbus* another Tribune enacted a Law called *Domitia Lex*, that *the Pontifical Colledge should not, as they were wont, admit whom they would into the Order of Priesthood, but it should be in the Power of the People*; and because it was contrary to their Religion, that Church-Dignities should be bestowed by the common People; hence for very Shame he ordained, that the lesser part of the People, namely seventeen Tribes should elect whom they thought fit, and afterwards the Party elected should have his Confirmation or admission from the Colledge: thus by a Committee of seven Tribes taken out of thirty five, the ancient Form of Religion was alter'd and reduced to the Power of the lesser part of the People. This was the great

great Care of the People to bring Ordination and Consecration to the Laity.

The Religion in *Venice*, and the *Low-Countries* is sufficiently known, much need not be said of them: they admirably agree under a seeming contrariety; it is commonly said, that one of them hath all Religions, and the other no Religion; the Atheist of *Venice* may shake hands with the Sectary of *Amsterdam*. This is the Liberty that a popular estate can brag of, every man may be of any Religion, or no Religion, if he please; their main Devotion is exercised only in opposing and suppressing Monarchy. They both agree to exclude the Clergy from meddling in Government, whereas in all Monarchies both before the Law of *Moses*, and under it, and ever since: all Barbarians, Græcians, Romans, Infidels, Turks, and Indians, have with one Consent given such Respect and Reverence to their Priests, as to trust them with their Laws; and in this our Nation, the first Priests we read of before Christianity, were the *Druides*, who as *Cæsar* saith, *decided and determined Controversies, in Murder, in Case of Inheritance, of Bounds of Lands, as they in their Discretion judged meet; they grant Rewards and Punishments.* It is a Wonder to see what high Respect even the great *Turk* giveth to his *Mufti*, or chief Bishop, so necessary is Religion to strengthen and direct Laws.

To consider of the Point of Peace, It is well known, that no People ever enjoyed it without Monarchy. *Aristotle* saith, *the Lacedemonians preserved themselves by Warring; and after they had gotten to themselves the Empire, then were they presently undone, for that they could not live at Rest, nor do any better Exercise, than the Exercise of War, l. 2. c. 7.*
AF-

After *Rome* had expelled Kings, it was in perpetual War, till the time of the Emperours: once only was the Temple of *Janus* shut, after the end of the first *Punique War*, but not so long as for one year, but for some Moneths. It is true, as *Orosius* saith, that for almost 700 years, that is, from *Tullus Hostilius* to *Augustus Cæsar*, only for one Summer, the Bowels of *Rome* did not sweat Blood: On the Behalf of the *Romans* it may be said, that though the Bowels of *Rome* did always sweat Blood, yet they did obtain most glorious Victories abroad. But it may be truly answered, if all the *Roman* Conquests had no other Foundation but Injustice; this alone soils all the Glory of her warlike Actions. The most glorious War that ever *Rome* had, was with *Carthage*; the Beginning of which War, Sir *Walter Raleigh* proves to have been most unjustly undertaken by the *Romans*, in confederating with the *Mamertines*, and Aiding of Rebels, under the Title of protecting their Confederates; whereas Kings many times may have just Cause of War, for recovering and preserving their Rights to such Dominions as fall to them by Inheritance or Marriage; a Popular Estate, that can neither marry, nor be Heir to another, can have no such Title to a War in a Foreign Kingdom; and to speak the Truth, if it be rightly considered, the whole time of the Popularity of *Rome*, the *Romans* were no other than the only prosperous and glorious Thieves, and Robbers of the World.

If we look more narrowly into the *Roman* Government, it will appear, that in that very Age, wherein *Rome* was most victorious, and seemed to be most popular, she owed most of her Glory to an apparent kind of *Monarchy*. For it was the Kingly
Power

Power of the *Consuls*, who (as *Livy* saith) had the same Royal Jurisdiction, or absolute Power that the Kings had, not any whit diminished or abated, and held all the same Regal Ensignes of supreme Dignity, which helpt Rome to all her Conquests: whiles the Tribunes of the People were strugling at home with the Senate about Election of Magistrates, enacting of Laws, and calling to Account, or such other popular Affairs, the Kingly Consuls gained all the Victories abroad: Thus Rome at one and the same time was broken and distracted into two Shewes of Government; the Popular, which served only to raise Seditions and Discords within the Walls, whilest the Regal atchieved the Conquests of Foreign Nations and Kingdomes. Rome was so sensible of the Benefit and Necessity of *Monarchy*, that in her most desperate Condition and Danger, when all other Hopes failed her, she had still Resort to the Creation of a Dictator, who for the time was an absolute King; and from whom no Appeal to the People was granted, which is the royallest Evidence for *Monarchy* in the World; for they who were drawn to swear, they would suffer no King of Rome, found no Security but in Perjury, and breaking their Oath by admitting the Kingly Power in spite of their Teeth, under a new name of a Dictator or Consul: a just Reward for their wanton expelling their King for no other Crime they could pretend but Pride, which is most tolerable in a King of all men: and yet we find no particular Point of Pride charged upon him, but that he enjoyned the Romans to labour in cleansing, and casting of Ditches, and paving their Sinks: an Act both for the Benefit and Ornament of the City, and therefore commendable.

mendable in the King: But the Citizens of *Rome*, who had been Conquerours of all Nations round about them, could not endure of Warriors to become Quarriers, and Day-labourers. Whereas it is said, that *Tarquin* was expelled for the Rape committed by his Son on *Lucrece*; it is unjust to condemn the Father for the Crime of his Son; it had been fit to have petitioned the Father for the Punishment of the Offender: The Fact of young *Tarquin* cannot be excused, yet without wrong to the Reputation of so chaste a Lady as *Lucrece* is reputed to be, it may be said, she had a greater Desire to be thought chaste, than to be chaste; she might have died untouched, and unspotted in her Body, if she had not been afraid to be slandered for In chastity; both *Dionysius Halicarnassæus*, and *Livie*, who both are her Friends, so tell the Tale of her, as if she had chosen rather to be a Whore, than to be thought a Whore. To say Truth, we find no other Cause of the Expulsion of *Tarquin*, than the Wantonness, and Licentiousness of the People of *Rome*.

This is further to be considered in the *Roman* Government, that all the time between their Kings, and their Emperours, there lasted a continued strife, between the Nobility and Commons, wherein by Degrees the Commons prevailed at last, so to weaken the Authority of the Consuls and Senate, that even the last sparks of *Monarchy* were in a manner extinguished, and then instantly began the Civil War, which lasted till the Regal Power was quickly brought home, and settled in *Monarchy*. So long as the Power of the Senate stood good for the Election of Consuls, the Regal Power was preserved

served in them, for the Senate had their first Institution from *Monarchy*: It is worth the noting, that in all those places that have seemed to be most popular, that weak Degree of Government, that hath been exercised among them, hath been founded upon, and been beholden unto *Monarchical* Principles, both for the Power of assembling, and manner of consulting: for the entire and gross Body of any People, is such an unweildy and diffused thing as is not capable of uniting, or congregating, or deliberating in an entire Lump, but in broken Parts, which at first were regulated by *Monarchy*.

Furthermore it is observable, that *Rome* in her chief Popularity, was oft beholden for her Preservation to the Monarchical Power of the Father over the Children: by means of this Fatherly Power, saith *Bodin*, the Romans flourished in all Honour and Vertue, and oftentimes was their Commonwealth thereby delivered from most imminent Destruction, when the Fathers drew out of the Consistory, their Sons being Tribunes publishing Laws tending to Sedition. Amongst others *Cassius* threw his Son headlong out of the Consistory, publishing the Law *Agraria* (for the Division of Lands) in the Behoof of the People, and after by his own private Judgment put him to Death, the Magistrates, Sergeants, and People standing thereat astonied, and not daring to withstand his Fatherly Authority, although they would with all their Power have had that Law for Division of Lands; which is sufficient Proof, this Power of the Father not only to have been sacred and inviolable, but also to have been lawful for him, either by Right or Wrong to

dispose of the Life and Death of his Children, even contrary to the Will of the Magistrates and People.

It is generally believed that the Government of Rome, after the Expulsion of Kings, was popular; Bodin endeavours to prove it, but I am not satisfied with his Arguments, and though it will be thought a Paradox, yet I must maintain, it was never truly popular.

First it is difficult to agree, what a popular Government is, Aristotle saith it is where *Many or a Multitude do rule*; he doth not say where *the People*, or the *major part of the People*, or the *Representors of the People govern*.

Bodin affirms if *all the People be interessed in the Government*, it is a *Popular Estate*, Lib. 2. c. 1. but after in the same Chapter he resolves, that *it is a Popular Estate, when all the People, or the greater part thereof hath the Sovereignty*, and he puts the Case that if there be threescore thousand Citizens, and forty thousand of them have the Sovereignty, and twenty thousand be excluded, it shall be called a popular Estate. But I must tell him, though fifty nine thousand, nine hundred, ninety nine of them govern, yet it is no popular Estate, for if but one man be excluded, the same reason that excludes that one man, may exclude many hundreds, and many thousands, yea, and the major part it self; if it be admitted, that the People are or ever were free by Nature, and not to be governed, but by their own Consent, it is most unjust to exclude any one man from his Right in Government; and to suppose the People so unnatural, as at the first to have
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all consented to give away their Right to a major part, (as if they had Liberty given them only to give away, and not to use it themselves) is not only improbable, but impossible; for the whole People is a thing so uncertain and changeable, that it alters every moment, so that it is necessary to ask of every Infant so soon as it is born its Consent to Government, if you will ever have the Consent of the whole People.

Moreover, if the Arbitrary Tryal by a Jury of twelve men, be a thing of that admirable Perfection and Justice as is commonly believed, wherein the *Negative Voice* of every single Person is preserved, so that the dissent of any of the twelve frustrates the whole Judgment: How much more ought the natural freedom of each man be preserved, by allowing him his *Negative Voice*, which is but a continuing him in that estate, wherein, it is confessed, Nature at first placed him; Justice requires that no one Law should bind all, except all consent to it, there is nothing more violent and contrary to Nature, than to allow a major part, or any other greater part less than the whole to bind all the People.

The next difficulty to discovering what a Popular Estate is, is to find out where the Supreme Power in the Roman Government rested; it is Bodin's opinion, that in the Roman state the Government was in the Magistrates, the Authority and Counsel in the Senate, but the Sovereign Power and Majesty in the People. Lib. 2. c. 1. So in his first Book his Doctrine is, that the ancient Romans said, *Imperium in Magistratibus, Authoritatem*

in Senatu, Potestatem in plebe, Majestatem in Populo jure esse dicebant. These four words *Command, Authority, Power, and Majesty* signifie ordinarily, one and the same thing, to wit, the Sovereignty, or supreme Power, I cannot find that *Bodin* knows how to distinguish them; for they were not distinct Faculties placed in several Subjects, but one and the same thing diversly qualified, for *Imperium, Autoritas, Potestas, and Majestas* were all originally in the Consuls; although for the greater shew the Consuls would have the Opinion, and Consent of the Senate who were never called together, nor had their Advice asked, but when and in what Points only it pleased the Consuls to propound: so that properly *Senatusconsultum* was only a Decree of the Consuls, with the Advice of the Senators: And so likewise the Consuls, when they had a mind to have the Countenance of an ampler Councel, they assembled the *Centuries*, who were reckoned as the whole People, and were never to be assembled, but when the Consuls thought fit to propound some Business of great weight unto them; so that *jussus populi*, the Command of the People which *Bodin* so much magnifies, was properly *jussus Consulum*, the Command of the Consuls, by the Advice or Consent of the Assembly of the Centuries, who were a Body composed of the Senators, and the rest of the Patritians, Knights, and Gentlemen, or whole Nobility together with the Commons: for the same men who had Voices in Senate, had also their Votes allowed in the Assembly of the Centuries, according to their several Capacities.

It may further appear, that the Roman Government,

ment was never truly popular, for that in her greatest Show of Popularity, there were to be found above ten Servants for every Citizen or Freeman, and of those Servants, not one of them was allowed any Place, or Voice in Government: If it be said that the *Roman* Servants were Slaves taken in War, and therefore not fit to be Freemen; to this it may be answered, that if the Opinion of our modern Politicians be good, which holds that *all men are born Free by Nature*, or if but the Opinion of *Aristotle* be found, who saith that *by Nature some men are Servants, and some are Masters*, then it may be unnatural, or unjust to make all Prisoners in War Servants or (as they are now called) *Slaves*, a Term not used in the Popular Governments, either of *Rome* or *Greece*; for in both Languages, the usual word that doth answer to our late Term of *Slave*, is but *Servus* in Latin, and *Δούλος* in Greek. Besides, if the Wars of the *Romans*, by which they gained so many Servants were unjust, as I take all offensive War to be without a special Commission from God, and as I believe all the *Roman* Wars were, that were made for the Enlargement of their Empire, then we may conclude, that the *Romans* were the notablest Plagiaries, or Men-stealers in the World.

But to allow the lesser part of the People of *Rome*, who called themselves Citizens, to have had a just Right to exclude all Servants from being a part of the people of *Rome*, let us enquire whether the major part of those, whom they allowed to be Citizens, had the Government of *Rome*; whereby we may discover easily how notoriously the poorer and

greater part of the Citizens were guld of their Share in Government ; There were two famous manners of their assembling the People of *Rome* : the first was by *Classes*, as they called them, which were divided into *Centuries* ; the second was by *Tribes*, or *Wards* ; the former of these was a Ranking of the People, according to their Abilities or Wealth; the latter according to the Place or Ward, wherein every Citizen dwelt : In the Assemblies of neither of these, had the major part of the People the Power of Government, as may thus be made appear.

First, for the Assembly of the *Centuries*, there were six Degrees or *Classes* of men according to their Wealth ; the first *Classis* was of the richest men in *Rome*, none whereof were under 200 *l.* in Value : The Valuation of the second *Classis* was not under fourscore Pounds ; and so the 3. the 4. and the fifth *Classis* were each a Degree one under another. The sixth *Classis* contained the poorer sort, and all the Rabble. These six *Classes* were subdivided into Hundreds, or *Centuries*.

The first <i>Classis</i> had	98	} <i>CENTURIES.</i>
The 2. had	22	
The 3. <i>Classis</i> had.	20	
The 4. had	22	
The 5. <i>Classis</i> had	30	
The 6. <i>Classis</i> had	13	
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The *Classes*, and *Centuries* being thus ordered, when the Assembly came to give their Votes, they

they did not give their Voices by the Poll, which is the true popular way: but each Century Voted by it self, each Century having one Voice, the major part of the Centuries carried the Business: Now there being fourscore and eighteen Centuries in the first Classis, in which all the Patricians, Senators, Noblemen, Knights, and Gentlemen of *Rome*, were inrolled, being more in Number, and above half the Centuries, must needs have the Government, if they agreed all together in their Votes, because they Voted first, for when 97 Centuries had agreed in their Votes, the other Centuries of the inferiour Classis, were never called to Vote; thus the Nobles, and richer men who were but few in Comparison of the Common People did bear the chief Sway, because all the poorer sort, or proletarian Rabble, were clap'd into the sixth Classis, which in reckoning were allowed but the single Voice of one Century, which never came to Voting: whereas in Number they did far exceed all the five other Classes or Centuries, and if they had been allowed the Liberty of other Citizens, they might have been justly numbered for a thousand Centuries, or Voices in the Assembly; This Device of packing so many thousands into one Century, did exclude far the greatest part of the People from having a part in the Government.

Next, for the Assembly of the People of *Rome* by Tribes, it must be considered, that the Tribes did not give their Voices by the Poll altogether, which is the true way of popular Voting, but each Tribe or Ward did Vote by it self, and the Votes of the major part (not of the People but) of the Tribes

Tribes did sway the Government, the Tribes being unequal, as all Divisions by Wards usually are, because the Number of the People of one Tribe, is not just the same with the Number of the People of each other Tribe; whence it followed, that the major Number of the Tribes might possibly be the minor Number of the People, which is a destroying of the Power of the major Part of the People.

Adde hereunto, that the Nobility of *Rome* were excluded from being present at the Assembly of the Tribes; and so the most considerable part of the People was wanting, therefore it could not be the Voices of the major part of the People, where a great part of the People were allowed no Voices at all, for it must be the major part of the whole, and not of a Part of the People, that must denominate a popular Government.

Moreover it must be noted, that the Assembly of the Tribes was not originally the Power of the People of *Rome*, for it was almost 40 years after the Rejection of Kings before an Assembly of Tribes were thought on, or spoken of; for it was the Assembly of the People by Centuries, that agreed to the Expulsion of Kings, & creating of Consuls in their Room, also the Famous Laws of the twelve Tables were ratified by the Assembly of the Centuries. This Assembly by Centuries, as it was more Ancient, than that by Tribes; so it was more truly popular, because all the Nobility, as well as the Commons, had Voices in it: The Assembly by Tribes, was pretended at first, only to elect Tribunes of the People, and other inferiour Magistrates, to determine of lesser Crimes that were not Capital, but only

ily finable; and to decree that Peace should be made; but they did not meddle with denouncing War to be made, for that high Point did belong only to the Assembly of the Centuries; and so also did the judging of Treason, and other Capital Crimes. The Difference between the Assembly of the Tribes, and of the Centuries, is very material; for though it be commonly thought, that either of these two Assemblies were esteemed to be the People, yet in Reality it was not so, for the Assembly of the Centuries only could be said to be the People, because all the Nobility were included in it as well as the Commons, whereas they were excluded out of the Assembly of the Tribes; and yet in Effect, the Assembly of the Centuries was but as the Assembly of the Lords, or Nobles only, because the lesser, and richer part of the People had the Sovereignty, as the Assembly of the Tribes was, but the Commons only.

In maintenance of the popular Government of Rome, *Bodin* objects, that there could be no regal Power in the two Consuls, who could neither make Law, nor Peace, nor War. The Answer is, though there were two Consuls, yet but one of them had the Regality; for they governed by Turns, one Consul one Moneth, and the other Consul another Moneth; or the first one day, and the second another day. That the Consuls could make no Laws is false, it is plain by *Livy*, that they had the Power to make Laws, or War, and did execute that Power, though they were often hindered by the Tribunes of the People; not for that the Power of making Laws or War, was ever taken away from the Consuls, or communicated to the Tribunes, but

but onely the Exercise of the Consular Power was suspended by a seeming humble way of *intercession* of the Tribunes ; The Consuls by their first Institution had a lawful Right to do those things, which yet they would not do by reason of the shortness of their Reigns, but chose rather to countenance their actions with the title of a Decree of the Senate (who were their private Counsel) yea, and sometimes with the Decree of the Assembly of the Centuries (who were their Public Counsel) for both the Assembling of the Senate, and of the Centuries, was at the Pleasure of the Consuls, and nothing was to be propounded in either of them, but at the Will of the Consuls : which argues a Sovereignty in them over the Senate and Centuries ; the Senate of *Rome* was like the House of Lords, the Assembly of the Tribes resembled the House of Commons, but the Assembling of the *Centuries*, was a Body composed of Lords and Commons united to Vote together.

The Tribunes of the People bore all the Sway among the Tribes, they called them together when they pleased, without any Order, whereas the Centuries were never Assembled without Ceremony, and Religious observation of the Birds by the Augurs, and by the Approbation of the Senate, and therefore were said to be *auspicata*, and *ex autoritate Patrum*.

These things considered, it appears, that the Assembly of the Centuries was the only legitimate, and great Meeting of the People of *Rome* : as for any Assembling, or Electing of any Trustees, or Representatives of the People of *Rome*, in nature of
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the modern Parliaments, it was not in Use, or ever known in *Rome*.

Above two hundred and twenty years after the expulsion of Kings, a sudden humour took the Commons of *Rome*, that they would needs depart the City to *Janiculum*, on the other side of *Tybur*, they would not be brought back into the City, until a Law was made, That a *Plebiscitum*, or a Decree of the Commons might be observed for a Law; this Law was made by the Dictator *Hortensius*, to quiet the Sedition, by giving a part of the Legislative Power to the Commons, in such inferiour matters only, as by Toleration and Usurpation had been practised by the Commons. I find not that they desired an Enlargement of the Points which were the Object of their Power, but of the Persons, or Nobility that should be subject to their Decrees: the great Power of making War, of creating the greater Magistrates, of judging in Capital Crimes, remained in the Consuls, with the Senate, and Assembly of the Centuries.

For further manifestation of the broken and distracted Government of *Rome*, it is fit to consider the original Power of the Consuls, and of the Tribunes of the Commons, who are ordinarily called the Tribunes of the People.

First, it is undeniable, that upon the expulsion of Kings, Kingly power was not taken away, but only made Annual and changeable between two Consuls; who in their Turns, and by course had the Sovereignty, and all Regal power; this appears plainly in *Livy*, who tells us, that *Valerius Publicola* being Consul, he himself alone ordained a Law,

a Law, and then assembled a general Session.

Turentillus Arsa inveighed and complained against the Consul's Government, as being so absolute, and in Name only less odious than that of Kings, but in Fact more cruel; for instead of one Lord the City had received twain, having Authority beyond all Measure, unlimited and infinite. *Sextius* and *Licinus* complain, that there would never be any indifferent Course, so long as the Nobles kept the Sovereign Place of Command, and the Sword to strike, whiles the poor Commons have only the Buckler; their Conclusion was, that it remains, that the Commons bear the Office of Consuls too, for that were a Fortress of their Liberty, from that day forward, shall the Commons be Partakers of those things, wherein the Nobles now surpass them, namely Sovereign Rule and Authority.

The Law of the twelve Tables affirms, *Regio imperio duo sunt, iique Consules appellantur*. Let two have regal Power, and let them be called Consuls: also the Judgment of *Livy* is, that the Sovereign Power was translated from Consuls to Decemvirs, as before from Kings to Consuls. These are proofs sufficient to shew the Royal Power of the Consuls.

About sixteen years after the first Creation of Consuls, the Commons finding themselves much run into Debt, by wasting their Estates in following the Wars; and so becoming, as they thought, oppressed by Usury, and cast into Prison by the Judgment, and Sentence of the Consuls, they grievously complained of Usury, and of the Power of the Consuls, and by Sedition prevailed, and obtained Leave to choose among themselves Magistrates called Tribunes of the People, who by their *Intercession* might preserve the Commons from being oppressed

pressed, and suffering Wrong from the Consuls: and it was further agreed, that the Persons of those Tribunes should be sacred, and not to be touched by any. By means of this Immunity of the Bodies of the Tribunes from all Arrests or other Violence, they grew in time by Degrees to such Boldness, that by stopping the legal Proceedings of the Consuls (when they pleased to intercede) they raised such an Anarchy oft times in Government, that they themselves might act, and take upon them, what Power soever they pleased (though it belonged not to them.) This Gallantry of the Tribunes was the Cause, that the Commons of *Rome*, who were diligent Pretenders to Liberty, and the great Masters of this part of Politiques, were thought the only famous Preservers, and Keepers of the Liberty of *Rome*. And to do them right, it must be confessed, they were the only men that truly understood the Rights of a *Negative Voice*; if we will allow every man to be naturally free till they give their Consent to be bound, we must allow every particular Person a Negative Voice; so that when as all have equal Power, and are as it were fellow-Magistrates or Officers, each man may impeach, or stop his Fellow-Officers in their Proceedings, this is grounded upon the general Reason of all them, which have any thing in Common, where he which forbiddeth, or denyeth, hath most Right; because his Condition in that Case is better than his which commandeth, or moveth to proceed; for every Law or Command, is in it self an Innovation, and a Diminution of some part of popular Liberty; for it is no Law except it restrain Liberty; he that by his negative Voice doth forbid or hinder the Proceeding of a new Law,

Law, doth but preserve himself in that Condition of Liberty, wherein Nature hath placed him; and whereof he is in present Possession; the Condition of him thus in Possession being the better, the stronger is his Prohibition, any single man hath a juster Title to his *Negative Voice*, than any Multitude can have to their Affirmative; to say the People are free, and not to be governed, but by their own Consent, and yet to allow a major part to rule the whole, is a plain Contradiction, or a destruction of natural Freedom. This the Commons of *Rome* rightly understood, and therefore the transcendent Power of the Negative Voice of any one Tribune, being able of it self to stay all the Proceedings, not of the Consuls and Senate only, and other Magistrates, but also of the rest of his fellow-Tribunes, made them seem the powerfulest men in all *Rome*; and yet in Truth they had no Power or Jurisdiction at all, nor were they any Magistrates, nor could they lawfully call any man before them, for they were not appointed for Administration of Justice, but only to oppose the Violence, and Abuse of Magistrates, by interceeding for such as appealed, being unjustly oppressed; for which Purpose at first they sat only without the Door of the Senate, and were not permitted to come within the Doors: this Negative Power of theirs was of Force only to hinder, but not to help the Proceedings in Courts of Justice; to govern, and not to govern the People. And though they had no Power to make Laws, yet they took upon them to propound Laws, and flattered and humoured the Commons by the *Agrarian* and *Fruментарian* Laws, by the first they divided the Common fields, and conquered Lands among

among the Common People; and by the latter, they afforded them Corn at a cheaper or lower price: by these means these Demagogues or Tribunes of the Commons led the Vulgar by the Noses, to allow whatsoever Usurpations they pleased to make in Government.

The Royal Power of the Consuls was never taken away from them by any Law that I hear of, but continued in them all the time of their pretended popular Government, to the very last, though repined at, and opposed in some particulars by the Commons.

The *No-Power*, or *Negative Power* of the Tribunes, did not long give content to the Commons, and therefore they desired, that one of the Consuls might be chosen out of the Commonalty: the eager propounding of this point for the Commons, and the diligent opposing of it by the Nobility or Senate, argues how much both parties regarded the Sovereign power of a Consul; the Dispute lasted fourscore years within two: the Tribunes pressing it upon all advantages of opportunity, never gave over till they carried it by strong hand, or stubbornness, hindring all Elections of the *Curule*, or greater Magistrates, for five years together, whereby the Nobles were forced to yield the Commons a Consul's place, or else an *Anarchy* was ready to destroy them all; and yet the Nobility had for a good while allowed the Commons *Military Tribunes with Consular Power*, which, in effect or substance, was all one with having one of the Consuls a Commoner, so that it was the bare Name of a Consul which the Commons so long strived for with the Nobility: In this contention,

some Years Consuls were chosen, some years *Military* Tribunes in such Confusion, that the *Roman* Historians cannot agree among themselves, what Consuls to assign, or name for each Year, although they have *Capitoline* Tables, *Sicilian* and *Greek* Registers, and Kalenders, Fragments of *Capitoline* Marbles, *linen Books* or *Records* to help them: a good while the Commons were content with the Liberty of having one of the Consuls a Commoner; but about fourscore years after they enjoyed this Privilege, a Desire took them to have it enacted, that a Decree of the Commons called a *plebiscitum* might be observed for a Law, *Hortensius* the Dictator yielded to enact it, thereby to bring back the Seditious Commons, who departed to *Janiculum* on the other side of *Tybur*, because they were deeply engaged in Debt in regard of long Seditions and Dissensions. The eleventh Book of *Livy*, where this Sedition is set down, is lost; we have only a touch of it in *Florus* his Epitome, and *St. Augustine* mentions the Plundering of many Houses by the Commons at their departing: this Sedition was above 220 years after the Expulsion of Kings, in all which time, the People of *Rome* got the Spoil of almost all *Italy*, and the wealth of very many rich Cities: and yet the Commons were in so great Penury, and over whelmed with Debts that they fell to plunder the rich Houses of the Citizens, which sounds not much for the Honour of a popular Government. This communicating of a legislative Power to the Commons, touching Power of enfranchising Allies, Judgments Penal, and Fines, and those Ordinances that concerned the Good of the Commons called *Plebiscita*, was a dividing

of the Snpreme Power, and the giving a Share of it to others, as well as to the Consuls, and was in effect to destroy the legislative Power, for to have two Supremes is to have none, because the one may destroy the other, and is quite contrary to the indivisible nature of Sovereignty. The Truth is, the Consuls, having but annual Sovereignty, were glad for their own Safety, and Ease in Matters of great Importance, and Weight, to call together sometimes the Senate, who were their ordinary Council, and many times the Centuries of the People, who were their Council extraordinary, that by their Advice they might countenance, and strengthen such Actions as were full of Danger and Envy : and thus the Consuls by weakening their original Power brought the Government to Confusion, civil Diffension, and utter Ruine: so dangerous a thing it is to shew Favour to Common People, who interpret all Graces and Favours for their Rights, and just Liberties: the Consuls following the Advice of the Senate or People, did not take away their Right of Governing no more than Kings lose their Supremacy by taking Advice in Parliaments.

Not only the Consuls, but also the Pretors and Censors (two great Offices, ordained only for the ease of the Consuls, from whom an Appeal lay to the Consuls) did in many things exercise an arbitrary or legislative Power in the Absence of the Consuls; they had no Laws to limit them: for many Years after the Creation of Consuls, ten men were sent into *Greece* to choose Laws; and after the 12 Tables were confirmed, whatsoever the Pretors, who were but the Consuls Substitutes, did

command, was called *jus honorarium* ; and they were wont at the Entrance into their Office to collect, and hang up for publick View, a Form of Administration of Justice which they would observe, and though the *edictum Prætoris*, expired with the Pretors Office; yet it was called *Edictum perpetuum*.

What Peace the Low-Countries have found since their Revolt is visible ; it is near about an hundred Years since they set up for themselves, of all which time only twelve years they had a Truce with the Spaniard, yet in the next year, after the Truce was agreed upon, the War of *Juliers* brake forth, which engaged both Parties ; so that upon the matter, they have lived in a continued War, for almost 100 Years: had it not been for the Aid of their Neighbours, they had been long ago swallowed up, when they were glad humbly to offer their new hatch'd Commonweal, and themselves Vassals to the Queen of *England*, after that the French King *Hen. 3.* had refused to accept them as his Subjects; That little Truce they had, was almost as costly as a War; they being forced to keep about thirty thousand Souldiers continually in Garrison. Two things they say they first fought about, Religion and Taxes; and they have prevailed it seems in both, for they have gotten all the Religions in Christendome, and pay the greatest Taxes in the World ; they pay Tribute half in half for Food, and most necessary things, paying as much for Tribute as the price of the thing sold ; Excise is paid by all Retailers of Wine, and other Commodities; for each Tun of Beer six Shillings, for each Cow for the Pail two Stivers every week: for Oxen, Horses, Sheep, and other beasts sold in the Market
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the twelfth part at least, be they never so oft sold by the year to and fro, the new Master still pays as much: they pay five Stivers for every Bushel of their own Wheat, which they use to grinde in publick Mills: These are the Fruits of the Low-Country War.

It will be said that *Venice* is a Commonwealth that enjoys Peace. She indeed of all other States hath enjoyed of late the greatest Peace; but she owes it not to her kind of Government, but to the natural Situation of the City, having such a Banck in the Sea of neer threescore Miles, and such Marshes towards the Land, as make her unapproachable by Land, or Sea; to these she is indebted for her Peace at home, and what Peace she hath abroad she buys at a dear Rate; and yet her Peace is little better than a continued War; The City always is in such perpetual Fears, that many besieged Cities are in more Security; a Senator or Gentleman dares not converse with any Stranger in *Venice*, shuns Acquaintance, or dares not own it: they are no better than Banditos to all humane Society. Nay, no People in the World live in such Jealousie one of another; hence are their intricate Solemnities, or rather Lotteries in Election of their Magistrates, which in any other Place, would be ridiculous and useless. The Senators or Gentlemen are not only jealous of the Common People, whom they keep disarmed, but of one another; they dare not trust any of their own Citizens to be a Leader of their Army, but are forced to hire, and entertain Foreign Princes for their Generals, excepting their Citizens from their Wars, and hiring others in their Places; it cannot be said, that People live

in Peace which are in such miserable Fears continually.

The *Venetians* at first were subject to the *Roman* Emperour; and for fear of the Invasion of the *Hunnes* forsook *Padua*, and other places in *Italy*; and retired with all their Substance to those Islands where now *Venice* stands: I do not read they had any Leave to desert the defence of their Prince and Countrey, where they had got their Wealth, much less to set up a Government of their own; it was no better than a Rebellion, or Revolting from the *Roman* Empire. At first they lived under a kind of *Oligarchy*; for several Islands had each a Tribune, who all met, and governed in common: but the dangerous Seditions of their Tribunes, put a necessity upon them to choose a Duke for Life, who, for many hundreds of years, had an Absolute Power; under whose Government *Venice* flourished most, and got great Victories, and rich Possessions. But by insensible degrees, the Great Council of the Gentlemen have for many years been lessening the Power of their Dukes, and have at last quite taken it away. It is a strange Errour for any man to believe, that the Government of *Venice* hath been alwayes the same that it is now: he that reads but the History of *Venice*, may find for a long time a Sovereign Power in their Dukes: and that for these last two hundred years, since the diminishing of that Power, there hath been no great Victories and Conquests obtained by that Estate.

That which exceeds admiration is, that *Contarene* hath the confidence to affirm the present Government of *Venice* to be a mixed Form of *Monarchy*, *Democratie*, and *Aristocratie*: For, whereas he makes the

the Duke to have the Person and Shew of a King ; he after confesseth, that the Duke can do nothing at all alone, and being joyned with other Magistrates, he hath no more Authority than any of them : also the power of the Magistrates is so small, that no one of them, how great soever he be, can determine of any thing of moment, without the allowance of the Councel. So that this Duke is but a man dressed up in Purple, a King only in Pomp and Ornament, in Power but a Senator, within the City a Captive, without a Traytor, if he go without Leave. As little reason is there to think a Popular Estate is to be found in the great Councel of *Venice*, or *S. P. Q. V.* for it doth not consist of the fortieth part of the People, but only of those they call Patritians or Gentlemen ; for the Commons, neither by themselves, nor by any chosen by them for their Representors, are admitted to be any part of the Great Councel : and if the Gentlemen of *Venice* have any Right to keep the Government in their own hands, and to exclude the Commons, they never had it given them by the People, but at first were beholding to *Monarchy* for their Nobility. This may further be noted, that though *Venice* of late enjoyed Peace abroad, yet it had been with that Charge, either for Fortification and Defence, or in Bribery so excessive, whereby of late upon any terms they purchased their Peace, that it is said their Taxes are such, that Christians generally live better under the *Turk*, than under the *Venetians*; for there is not a grain of Corn, a spoonful of Wine, Salt, Eggs, Birds, Beasts, Fowl, or Fish sold, that payeth not a certain Custom : upon occasions the Labourers and Crafts-men pay a Rate by the Poll monthly,

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they receive incredible Gains by Usury of the Jews; for in every City they keep open Shops of Interest, taking pawns after fifteen in the hundred, and if at the years end it be not redeemed, it is forfeited, or at the least, sold at great loss. The Revenues which the very Courtizans pay for Toleration, maintains no less than a dozen of Gallies.

By what hath been said, it may be judged how unagreeable the popular Government of *Rome* heretofore, and of *Venice*, and the *United Provinces* at present, are, either for Religion or Peace (which two are principal ingredients of Government) and so consequently not fit to be reckoned for Forms, since whatsoever is either good or tolerable in either of their Governments, is borrowed or patched up of a broken, and distracted *Monarchy*. Lastly, though *Venice* and the *Low Countreys* are the only remarkable places in this age that reject *Monarchy*; yet neither of them pretend their Government to be founded upon any original Right of the People, or have the Common people any power amongst them, or any chosen by them. Never was any popular Estate in the World famous for keeping themselves in peace; all their glory hath been for Quarrelling and Fighting.

Those that are willing to be perswaded, that the power of Government is originally in the People, finding how impossible it is for any people to exercise such power, do surmise, that though the people cannot govern, yet they may choose Representatives or Trustees, that may manage this power for the People, and such Representatives must be surmised to be the People. And since such Representatives cannot

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not truly be chosen by the People, they are fain to divide the People into several parts, as of Provinces, Cities, and Burrough-Towns, and to allow to every one of those parts to choose one Representor or more of their own : and such Representors, though not any of them be chosen by the whole, or major part of the People, yet still must be surmised to be the People ; nay, though not one of them be chosen either by the People, or the major part of the People of any Province, City, or Burrough, for which they serve, but onely a smaller part, still it must be said to be the People. Now when such Representors of the People do Assemble or meet, it is never seen that all of them can at one time meet together ; and so there never appears a true, or full Representation of the whole People of the Nation, the Representors of one part or other being absent, but still they must be imagined to be the People. And when such imperfect Assemblies be met, though not half be present, they proceed : and though their number be never so small, yet it is so big, that in the debate of any Business of moment, they know not how to handle it, without referring it to a fewer number than themselves, though themselves are not so many as they should be. Thus those that are chosen to represent the People, are necessitated to choose others, to represent the Representors themselves ; a Trustee of the North doth delegate his power to a Trustee of the South ; and one of the East may substitute one of the West for his Proxy : hereby it comes to pass, that Publick Debates which are imagined to be referred to a general Assembly of a Kingdom, are contracted into a particular or private Assembly,

Assembly, than which nothing can be more destructive, or contrary to the nature of Publick Assemblies. Each company of such Trustees hath a Prolocutor, or Speaker; who, by the help of three or four of his fellows that are most active, may easily comply in gratifying one the other, so that each of them in their turns may sway the Trustees, whilst one man, for himself or his friend, may rule in one Business, and another man for himself or his friend prevail in another cause, till such a number of Trustees be reduced to so many petty Monarchs as there be men of it. So in all Popularities, where a General Council, or great Assembly of the People meet, they find it impossible to dispatch any great Action, either with Expedition or Secrecy, if a publick free Debate be admitted; and therefore are constrained to Epitomize, and sub-epitomize themselves so long, till at last they crumble away into the Atomes of *Monarchy*, which is the next degree to *Anarchy*; for *Anarchy* is nothing else but a broken *Monarchy*, where every man is his own *Monarch*, or Governour.

Whereas the Power of the People in choosing both their Government and Governours, is of late highly magnified, as if they were able to choose the best and excellentest men for that purpose. We shall find it true what *Aristotle* hath affirmed, that *to choose well is the office of him that hath Knowledge; none can choose a Geometrician but he that hath skill in Geometry*, l. 3. c. 11. for, saith he, *All men esteem not Excellency to be one and the same*, l. 3. c. 17.

A great deal of talk there is in the World of the Freedom and Liberty that they say is to be found in Popular Commonweals ; it is worth the enquiry how far, and in what sense this Speech of Liberty is true. *True Liberty is for every man to do what he list, or to live as he please, and not to be tied to any Laws.* But such Liberty is not to be found in any Commonweal ; for there are more Laws in Popular Estates than any where else ; and so consequently less Liberty : and Government many say was invented to take away Liberty, and not to give it to every man ; such Liberty cannot be ; if it should, there would be no Government at all : therefore *Aristotle, l. 6. cap. 4. It is profitable not to be lawful to do every thing that we will, for power to do what one will, cannot restrain that Evil that is in every man ;* so that true Liberty cannot, nor should not be in any Estate. But the onely Liberty that the talkers of Liberty can mean, is a Liberty for some men to *Rule and to be Ruled*, for so *Aristotle* expounds it ; one while to Govern, another while to be Governed ; to be a King in the forenoon, and a Subject in the afternoon ; this is the onely Liberty that a Popular Estate can brag of, that where a *Monarchy* hath but one King, their Government hath the liberty to have many Kings by turns. If the Common People look for any other Liberty, either of their Persons or their Purses, they are pitifully deceived, for a perpetual Army and Taxes are the principal materials of all Popular Regiments : never yet any stood without them, and very seldom continued with them ; many popular Estates have started up, but few have lasted ; *It is no hard matter for any kind of Government to last one, or two, or three*

three dayes, l. 6. c. 5. For all such as out of hope of Liberty, attempt to erect new Forms of Government, he gives this prudent Lesson. *We must look well into the continuance of Time, and remembrance of many Years, wherein the means tending to establish Community had not lain hid, if they had been good and useful; for almost all things have been found out, albeit some have not been received, and other some have been rejected, after men have had experience of them; l. 2. c. 5.*

It is believed by many, that at the very first Assembling of the People, it was unanimously agreed in the first place, that the Consent of the major part should bind the whole; and that though this first Agreement cannot possibly be proved, either how, or by whom it should be made; yet it must necessarily be believed or supposed, because otherwise there could be no lawful Government at all. That there could be no lawful Government, except a general Consent of the whole People be first surmised, is no sound proposition; yet true it is, that there could be no popular Government without it. But if there were at first a Government without being beholden to the People for their Consent, as all men confess there was, I find no reason but that there may be so still, without asking Leave of the Multitude.

If it be true, that men are by nature free-born, and not to be governed without their own Consents, and that Self-preservation is to be regarded in the first place, it is not lawful for any Government but *Self-government* to be in the World, it were sin in the People to Desire, or attempt to Consent to any other Government: if the Fa-

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thers will promise for themselves to be Slaves, yet for their Children they cannot, who have alwayes the same Right to set themselves at Liberty, which their Fathers had to Enslave themselves.

To pretend that a major part, or the silent Consent of any part, may be interpreted to bind the whole People, is both unreasonable and unnatural; it is against all Reason for men to bind others, where it is against Nature for men to bind themselves. Men that boast so much of natural Freedom, are not willing to consider how contradictory and destructive the Power of a major part is to the natural Liberty of the whole People; the two grand Favourites of the Subjects, *Liberty* and *Property* (for which most men pretend to strive) are as contrary as Fire to Water, and cannot stand together. Though by humane Laws in *Voluntary Actions*, a major part may be tolerated to bind the whole Multitude, yet in *Necessary Actions*, such as those of Nature are, it cannot be so. Besides, if it were possible for a whole People to choose their Representatives, then either every, each one of those Representatives ought to be particularly chosen by the whole People, and not one Representative by one part, and another Representative by another part of the People, or else it is necessary, that continually the entire Number of the Representatives be present, because otherwise the whole People is never represented.

Again, it is impossible for the People, though they might and would choose a Government, or Governours, ever to be able to do it: for the People, to speak truly and properly, is a thing or Body
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in continual Alteration and Change, it never continues one Minute the same, being composed of a Multitude of Parts, whereof divers continually decay and perish, and others renew and succeed in their places; they which are the People this Minute, are not the People the next Minute. If it be answered, that it is impossible to stand so strictly, as to have the Consent of the whole People; and therefore that which cannot be, must be supposed to be the Act of the whole People: This is a strange Answer, first to affirm a Necessity of having the Peoples Consent, than to confess an Impossibility of having it. If but once that Liberty, which is esteemed so sacred, be broken, or taken away but from one of the meanest or basest of all the People; a wide Gap is thereby opened for any Multitude whatsoever, that is able to call themselves, or whomsoever they please, the People.

Howsoever men are naturally willing to be persuaded, that all Sovereignty flows from the Consent of the People, and that without it no true Title can be made to any Supremacy; and that it is so *currant an Axiome of late*, that it will certainly *pass without Contradiction* as a late Exercitator tells us: yet there are *many and great Difficulties* in the Point never yet determined, not so much as disputed, all which the Exercitator waves and declines, professing he will not insist upon the Distinctions, touching the manner of the Peoples passing their Consent, nor determine which of them is sufficient, and which not to make the Right or Title; whether it must be *Antecedent to Possession*, or may be consequent: *Express, or Tacite: Collective, or Representative: Absolute, or conditioned: Free, or Inforced: Revocable, or Ir-*

revocable

revocable. All these are material Doubts concerning the Peoples Title, and though the *Exercitator* will not himself determine what Consent is sufficient, and what not, to make a Right or Title, yet he might have been so courteous, as to have directed us, to whom we might go for Resolution in these Cases. But the Truth is, that amongst all them that plead the Necessity of the Consent of the People, not one of them hath ever toucht upon these so necessary Doctrines; it is a Task it seems too difficult, otherwise surely it would not have been neglected, considering how necessary it is to resolve the Conscience, touching the manner of the Peoples passing their Consent; and what is sufficient, and what not, to make, or derive a Right, or Title from the People.

No Multitude or great Assembly of any Nation, though they be all of them never so good and virtuous, can possibly govern; this may be evidently discovered by considering the Actions of great and numerous Assemblies, how they are necessitated to relinquish that supreme Power, which they think they exercise, and to delegate it to a few. There are two Parts of the Supreme Power, the *legislative*, and the *Executive*, neither of these can a great Assembly truly act. If a new Law be to be made it may in the General receive the Proposal of it from one or more of the General Assembly, but the forming, penning, or framing it into a Law is committed to a few, because a great number of persons cannot without tedious, and dilatory Debates, examine the Benefits and Mischiefs of a Law. Thus in the very first Beginning the Intention of a general Assembly is frustrated; then after a Law is
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penned or framed, when it comes to be questioned, whether it shall pass or nay; though it be Voted in a full Assembly, yet by the Rules of the Assembly, they are all so tyed up, and barred from a free and full Debate; that when any man hath given the Reasons of his Opinion; if those Reasons be argued against, he is not permitted to reply in Justification or Explanation of them, but when he hath once spoken, he must be heard no more: which is a main Denial of that Freedom of Debate, for which the great Assembly is alleaged to be ordained in the high Point of *Legislative Power*.

The same may be said, touching the *executive Power*; if a cause be brought before a great Assembly, the first thing done, is to referr, or commit it to some few of the Assembly, who are trusted with the examining the Proofs, and Witnesses, and to make Report to the general Assembly; who upon the Report proceed to give their Judgments without any publick hearing, or interrogating the Witnesses, upon whose Testimonies diligently examined every man that will pass a conscientious judgment is to rely. Thus the *legislative* and *executive Power* are never truly practised in a great Assembly; the true Reason whereof is, if Freedom be given to Debate, never any thing could be agreed upon without endless Disputes; meer Necessity compels to refer main Transactions of Business to particular Congregations and Committees.

Those Governments that seem to be popular are kinds of petty *Monarchies*, which may thus appear: Government is a Relation between the Governours, and the governed, the one cannot be with-

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out the other, *mutuo se ponunt & auferunt*; where a Command or Law proceeds from a major part, there those individual Persons that concurred in the Vote, are the Governours, because the Law is only their Will in particular: the Power of a major Part being a contingent, or casual thing, expires in the very Act it self of voting, which Power of a major part is grounded upon a Supposition, that they are the stronger part; when the Vote is past, these Voters, which are the major part, return again, and are incorporated into the whole Assembly, and are buried as it were in that Lump, and no otherwise considered; the Act or Law ordained by such a Vote, loseth the Makers of it, before it comes to be obeyed; for when it comes to be put in Execution, it becomes the Will of those who enjoyn it, and force Obedience to it, not by Virtue of any Power derived from the Makers of the Law. No man can say, that during the Reign of the late Queen *Elizabeth*, that King *Henry the 8th.* or *Edward the sixth* did govern, although that many of the Laws that were made in those two former Princes times, were observed, and executed under her Government; but those Laws, though made by her Predecessours, yet became the Laws of her present Government; who willed and commanded the Execution of them, and had the same Power to correct, interpret, or mitigate them, which the first makers of them had; every Law must always have some present known Person in Being, whose Will it must be to make it a Law for the Present; this cannot be said of the major part of any Assembly, because that major part instantly ceaseth, as

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soon as ever it hath voted : an infallible Argument whereof is this, that the same major part after the Vote given, hath no Power to correct, alter, or mitigate it, or to Cause it to be put in Execution ; so that he that shall act, or cause that Law to be executed, makes himself the Commander, or willer of it, which was originally the Will of others : It is said by Mr. *Hobs* in his *Leviathan* page 141. *nothing is Law, where the Legislator cannot be known; for there must be manifest Signs, that it proceedeth from the Will of the Sovereign; there is requisite, not only a Declaration of the Law, but also sufficient Signs of the Author and the Authority.*

That Senate or great Councel, wherein it is conceived the supreme, or legislative Power doth rest, consists of those Persons who are actually Subjects at the very same time, wherein they exercise their legislative Power, and at the same Instant may be guilty of breaking one Law, whilest they are making another Law ; for it is not the whole and entire Will of every particular Person in the Assembly, but that part onely of his Will, which accidentally falls out to concur with the Will of the greater part : So that the Sharers of the legislative Power have each of them, perhaps not a hundredth part of the legislative Power (which in it self is indivisible) and that not in *Act*, but in *Possibility*, only in one particular Point for that Moment, whilst they give their Vote. To close this Point which may seem strange and new to some, I will produce the Judgment of *Bodin*, in his sixth Book of a Commonweal, and the fourth Chapter ; his words are, *The chief Point of a Commonweal, which is the Right of Sovereignty, cannot be, nor insist, to speak properly,*
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but in Monarchy; for none can be Sovereign in a Commonwealth, but one alone; if they be two or three or more, no one is Sovereign; for that no one of them can give or take a Law from his Companion: and although we imagine a Body of many Lords, or of a whole People to hold the Sovereignty, yet hath it no true Ground nor Support, if there be not a Head with absolute Power to unite them together, which a simple Magistrate without Sovereign Authority cannot do. And if it chance that the Lords, or Tribes of the People be divided (as it often falls out) then must they fall to Arms one against another: and although the greatest part be of one Opinion, yet may it so happen, as the lesser part, having many Legions, and making a Head, may oppose it self against the greater Number, and get the Victory. We see the Difficulties which are, and always have been in popular Estates, whereas they hold contrary Parts and for divers Magistrates, some demand Peace, others War; some will have this Law, others that; some will have one Commander, others another; some will treat a League with the King of France, others with the King of Spain, corrupted or drawn, some one Way, some another, making open War, as hath been seen in our Age amongst the Gri-fons &c.

Upon these Texts of Aristotle forecited, and from the Mutability of the Roman Popularity, which Aristotle lived not to see, I leave the Learned to consider, whether it be not probable that these, or the like Paradoxes may be inferred to be the plain Mind of Aristotle, viz. 1. That there is no Form of Government, but Monarchy only. 2. That there is no Monarchy, but Pa-

64 Observations touching Forms &c.

ternal. 3. That there is no Paternal Monarchy, but Absolute, or Arbitrary. 4. That there is no such thing as an Aristocratie or Democratie. 5. That there is no such Form of Government as a Tyranny. 6. That the People are not born Free by Nature.

DIRECTI.



DIRECTIONS

F O R

Obedience to Government

I N

Dangerous or Doubtful Times.

ALL those who so eagerly strive for an original Power to be in the People, do with one Consent acknowledge, that originally the Supreme Power was in the Fatherhood ; and that the first Kings were Fathers of Families : This is not only evident, and affirmed by *Aristotle* ; but yielded unto by *Grotius*, Mr. *Selden*, Mr. *Hobbs*, Mr. *Ascam* ; and all others of that Party, not one excepted, that I know of.

Now for those that confess an original Subjection in Children, to be governed by their Parents, to dream of an original Free-

dom in Mankind, is to contradict themselves; and to make Subjects to be Free, and Kings to be Limited; to imagine such Pactions and Contracts between Kings and People, as cannot be proved ever to have been made, or can ever be described or fancied, how it is possible for such Contracts ever to have been, is a boldness to be wondered at.

Mr. Selden confesseth, that *Adam*, by donation from God, was made the general Lord of all things, not without such a private Dominion to himself, as (without his Grant) did exclude his Children. And by Donation, or Assignment, or some kind of Concession (before he was dead, or left any Heir to succeed him) his Children had their distinct Territories, by Right of Private Dominion. Abel had his Flocks, and Pastures for them: Cain had his Fields for Corn, and the Land of Nod, where he built himself a City.

It is confessed, that in the Infancy of the World, the Paternal Government was Monarchical; but when the World was replenished with multitude of people, then the Paternal Government ceased, and was lost; and an Elective kind of Government by the People, was brought into the World. To this it may be answered, That the paternal Power cannot be lost; it may either
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be *transferr'd* or usurped ; but never lost, or ceaseth. God, who is the giver of Power, may transferr it from the Father to some other ; he gave to *Saul* a Fatherly power over his Father *Kish*. God also hath given to the Father a Right or Liberty to alien his Power over his Children, to any other ; whence we find the Sale and gift of Children, to have been much in Use in the beginning of the World, when men had their Servants for a possession and an Inheritance as well as other Goods : whereupon we find the power of Castrating, and making Eunuchs much in Use in old times. As the power of the Father may be lawfully transferr'd or aliened, so it may be unjustly usurped : And in Usurpation, the Title of an Usurper is before, and better than the Title of any other than of him that had a former Right : for he hath a possession by the permissive Will of God, which permission, how long it may endure, no man ordinarily knows. Every man is to preserve his own Life for the Service of God, and of his King or Father; and is so far to obey an Usurper, as may tend not only to the preservation of his King and Father, but sometimes even to the preservation of the Usurper himself, when probably he may thereby be reserved to the Cor-

rection, or Mercy of his true Superiour; though by Humane Laws, a long Prescription may take away Right, yet Divine Right never dies, nor can be lost, or taken away.

Every man that is born, is so far from being Free-born, that by his very Birth he becomes a Subject to him that begets him: under which Subjection he is always to live, unless by immediate Appointment from God, or by the Grant or Death of his Father, he become possessed of that power to which he was subject.

The Right of Fatherly Government was ordained by God, for the preservation of Mankind; if it be usurped, the Usurper may be so far obeyed, as may tend to the preservation of the Subjects, who may thereby be enabled to perform their Duty to their true and right Sovereign, when time shall serve: in such Cases to obey an Usurper, is properly to obey the first and right Governour, who must be presumed to desire the Safety of his Subjects: the Command of an Usurper is not to be obeyed in any thing tending to the destruction of the Person of the Governour, whose Being in the first place is to be looked after.

It hath been said, that there have been
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so many Usurpations by Conquest in all Kingdoms, that all Kings are Usurpers, or the Heirs or Successors of Usurpers; and therefore any Usurper, if he can but get the possession of a Kingdom, hath as good a Title as any other.

Answer. The first Usurper hath the best Title, being, as was said, in possession by the Permission of God; and where an Usurper hath continued so long, that the knowledge of the right Heir be lost by all the Subjects, in such a case an Usurper in possession is to be taken and reputed by such Subjects for the true Heir, and is to be obeyed by them as their Father. As no man hath an infallible Certitude, but only a moral Knowledge, which is no other than a probable perswasion grounded upon a peaceable possession, which is a warrant for subjection to Parents and Governours; for we may not say, because Children have no infallible, or necessary certainty who are their true Parents, that therefore they need not obey, because they are uncertain: it is sufficient, and as much as Humane Nature is capable of, for Children to rely upon a credible perswasion; for otherwise the Commandement of *Honour thy Father*, would be a vain Commandment, and not possible to be observed.

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By Humane positive Laws, a Possession time out of mind takes away, or barrs a former Right, to avoid a general Mischief, of bringing all Right into a disputation not decideable by proof, and consequently to the overthrow of all Civil Government, in Grants, Gifts, and Contracts, between man and man: But in Grants and Gifts that have their original from God or Nature, as the Power of the Father hath, no Inferiour power of man can limit, nor make any Law of Prescription against them: upon this ground is built that common Maxim, that *Nullum tempus occurrit regi*, No time bars a King.

All Power on Earth is either *derived* or *usurped* from the Fatherly power, there being no other original to be found of any Power whatsoever; for if there should be granted two sorts of power without any subordination of one to the other, they would be in perpetual strife which should be Supreme, for two Supremes cannot agree; if the Fatherly power be supreme, then the power of the People must be subordinate, and depend on it; if the power of the People be supreme, then the Fatherly power must submit to it, and cannot be exercised without the Licence of the People, which must quite destroy the frame
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and course of Nature. Even the Power which God himself exerciseth over Mankind is by Right of Fatherhood; he is both the King and Father of us all; as God hath exalted the Dignity of Earthly Kings, by communicating to them his own Title, by saying *they are gods*; so on the other side, he hath been pleased as it were to humble himself, by assuming the Title of a King, to express his Power, and not the Title of any popular Government; we find it is a punishment to have *no King*, Hosea, *ch.* 3. 4. and promised, as a Blessing to *Abraham*, Gen. 17. 6. *that Kings shall come out of thee.*

Every man hath a part or share in the preservation of Mankind in general, he that usurps the Power of a Superiour, thereby puts upon himself a Necessity of acting the Duty of a Superiour in the Preservation of them over whom he hath usurped, unless he will aggravate one heinous Crime, by committing another more horrid; he that takes upon him the Power of a superiour sins sufficiently, and to the Purpose: but he that proceeds to destroy both his Superiour, and those under the Superiours Protection, goeth a Strain higher, by adding Murther to Robbery; if Government be hindered, mankind perisheth, an
Usurper

Usurper by hindering the Government of another, brings a Necessity upon himself to govern, his Duty before Usurpation was only to be ministerial, or instrumental in the preservation of others by his Obedience; but when he denies his own, and hinders the Obedience of others, he doth not only not help, but is the Cause of the Distraction in hindering his Superiour to perform his Duty, he makes the Duty his own: if a Superiour cannot protect, it is his part to desire to be able to do it, which he cannot do in the Future if in the present they be destroyed for want of Government: therefore it is to be presumed, that the Superiour desires the preservation of them that should be subject to him; and so likewise it may be presumed, that an Usurper in general doth the Will of his Superiour, by preserving the People by Government, and it is not improper to say, that in obeying an Usurper, we may obey primarily the true Superiour, so long as our Obedience aims at the preservation of those in Subjection, and not at the Destruction of the true Governour. Not only the Usurper, but those also over whom Power is usurped, may joyn in the preservation of themselves, yea, and in the preservation sometimes of the Usurper himself.

Thus

Thus there may be a conditional Duty, or Right in an Usurper to govern; that is to say, supposing him to be so wicked as to usurp, and not willing to surrender or forego his Usurpation, he is then bound to protect by Government, or else he encreaseth, and multiplyeth his Sin.

Though an Usurper can never gain a Right from the true Superiour, yet from those that are Subjects he may; for if they know no other that hath a better Title than the Usurper, then as to them the Usurper in Possession hath a true Right.

Such a qualified Right is found at first in all Usurpers, as is in Theives who have stolen Goods, and during the time they are possessed of them, have a Title in Law against all others but the true Owners, and such Usurpers to divers Intents and Purposes may be obeyed.

Neither is he only an Usurper who obtains the Government, but all they are Partakers in the Usurpation, who have either failed to give Assistance to their lawful Sovereign, or have given Aid either by their Persons, Estates or Counsels for the Destroying of that Governour, under whose Protection they have been born and preserved; for although it should be granted, that *Protection* and *Subjection* are re-

reciprocal, so that where the first fails, the latter ceaseth; yet it must be remembred, that where a man hath been born under the Protection of a long and peaceable Government, he owes an Assistance for the preservation of that Government that hath protected him, and is the Author of his own Disobedience.

It is said by some, that an usurped Power may be obeyed in things that are lawful: but it may not be obeyed not only in lawful things, but also in things indifferent: Obedience in things indifferent, is necessary; not indifferent. For in things necessarily good God is immediately obeyed, Superiours only by Consequence: If men command things evil, Obedience is due only by *tolerating* what they inflict: not by *performing* what they require: in the first they declare what God commands to be *done*, in the latter what to be *suffered*, so it remains, that things indifferent only are the proper Object of humane Laws. Actions are to be considered *simply* and alone, and so are good as being Motions depending on the first Mover; or *jointly* with Circumstances: And that in a double Manner. 1. In Regard of the *Ability* or *Possibility* whilst they may be done. 2. In the *Act* when they be performed: Before they be
done

done they be indifferent, but once breaking out into Act, they become distinctly Good or Evil according to the Circumstances which determine the same. Now an Action commanded, is supposed as not yet done (whereupon the Hebrews call the Imperative Mood the first Future) and so remaineth many times indifferent.

Some may be of Opinion, that if Obedience may be given to an Usurper in things indifferent, as well as to a lawful Power; that then there is as much Obedience due to an usurped Power, as to a lawful. But it is a Mistake; for though it be granted that in things indifferent, an Usurper may be obeyed, as well as a lawful Governour; yet herein lyeth a main Difference, that some things are indifferent for a lawful Superiour, which are not indifferent, but unlawful to an Usurper to enjoyn. Usurpation is the resisting, and taking away the Power from him, who hath such a former Right to govern the Usurper, as cannot lawfully be taken away: so that it cannot be just for an Usurper, to take Advantage of his own unlawful Act, or create himself a Title by continuation of his own Injustice, which aggravates, and never extenuates his Crime: and if it never can be an Act indifferent for the Usurper himself to disobey his Lawful

ful Sovereign; much less can it be indifferent for him to command another to do that to which he hath no Right himself. It is only then a matter indifferent for an Usurper to command, when the Actions enjoined are such; as the lawful Superiour is commanded by the Law of God, to provide for the benefit of his Subjects, by the same, or other like Restriction of such indifferent things; and it is to be presumed, if he had not been hindred, would have commanded the same, or the like Laws.

OBSER-

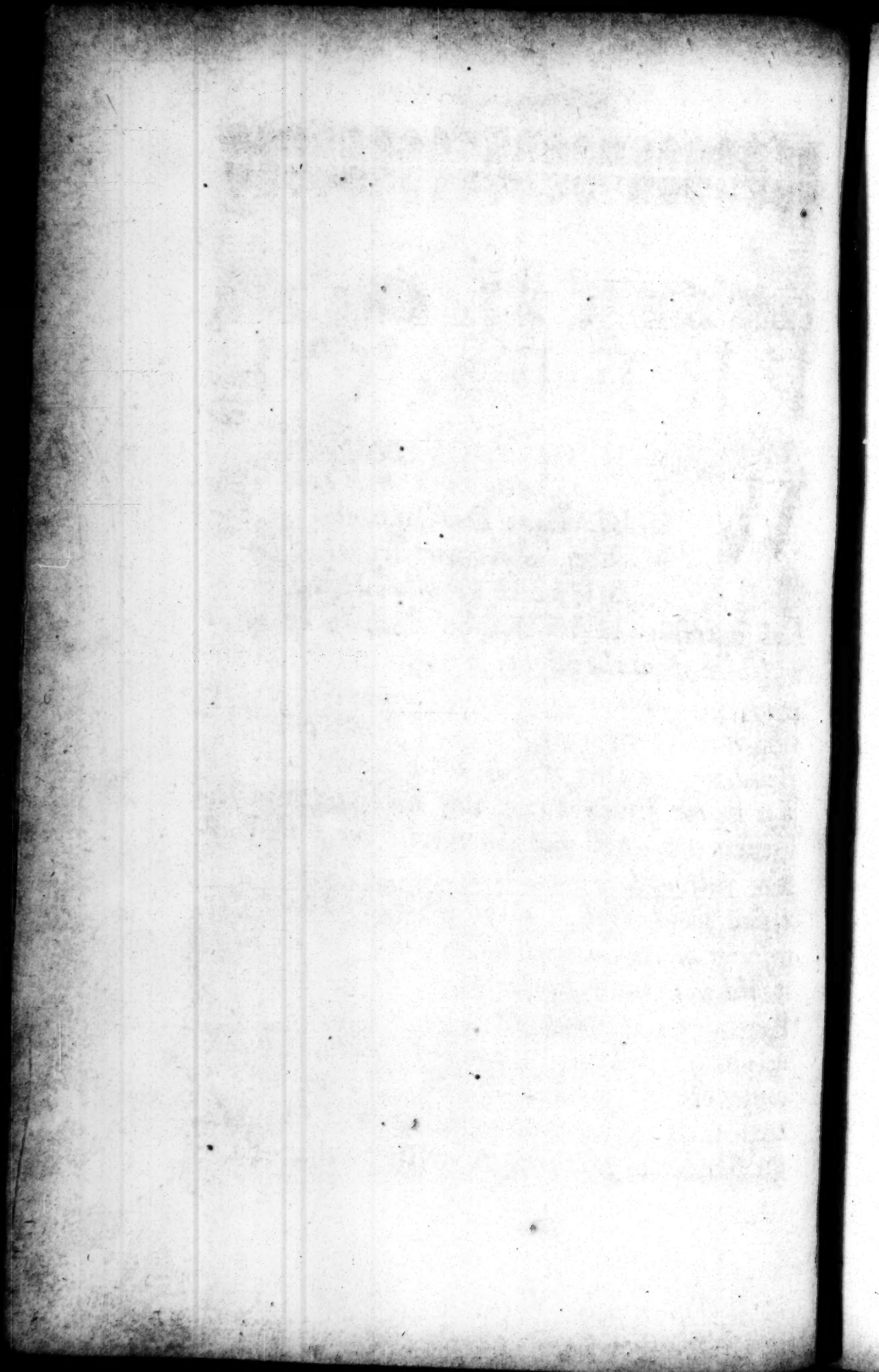
OBSERVATIONS

Concerning the
Original of Government,

Upon { Mr. HOBS *his Leviathan.*
Mr. MILTON against *Salmasius.*
H. GROTIUS *De Jure Belli.*
Mr. HUNTON'S *Treatise of Monarchy.*

Arist. Pol. Lib. 4.

Ἡ πρώτη πολιτεία ἐν τοῖς Ἑλλησιν ἐγέρετο μὲν ταῖς
βασιλείαις ἐκ τῶν πολεμένων.





THE PREFACE.

WITH *no small Content* I read Mr. Hobs's Book *De Cive*, and his *Leviathan*, about the Rights of Sovereignty, which no man, that I know, hath so amply and judiciously handled: I consent with him about the Rights of exercising Government, but I cannot agree to his means of acquiring it. It may seem strange I should praise his Building, and yet mislike his Foundation; but so it is, his *Jus Naturæ*, and his *Regnum Institutivum*, will not down with me: they appear full of Contradiction and Impossibilities; a few short Notes about them, I here offer, wishing he would consider, whether his Building would not stand firmer upon the Principles of *Regnum Patrimoniale* (as he calls it) both according to Scripture and Reason. Since he confesseth, the Father, being before the institution of a Commonwealth, was Originally an Absolute Sovereign, with power of Life

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The Preface.

and Death, *and that a great Family, as to the Rights of Sovereignty, is a little Monarchy. If, according to the order of Nature, he had handled Paternal Government before that by Institution, there would have been little liberty left in the Subjects of the Family to consent to Institution of Government.*

In his pleading the Cause of the People, he arms them with a very large Commission of Array ; which is, a Right in Nature for every Man, to war against every Man when he please : and also a Right for all the People to govern. This latter Point, although he affirm in Words, yet by Consequence he denies, as to me it seemeth.

He saith, a Representative may be of All, or but of a Part of the People. If it be of All, he terms it a Democratie, which is the Government of the People. But how can such a Commonwealth be generated ? for if every man Covenant with every man, who shall be left to be the Representative ? if All must be Representatives, who will remain to Covenant ? for he that is Sovereign makes no Covenant by his Doctrine. It is not All that will come together, that makes the Democratie, but All that have power by Covenant ; thus his Democratie by Institution fails.

The same may be said of a Democratie by acquisition ; for if all be Conquerours, who shall

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shall Covenant for Life and Liberty? and if all be not Conquerours, how can it be a Democratic by Conquest?

A Paternal Democratic I am confident he will not affirm; so that in conclusion the poor People are deprived of their Government, if there can be no Democratic, by his Principles.

Next, If a Representative Aristocratical of a Part of the People be free from Covenanting, then that whole Assembly (call it what you will) though it be never so great, is in the state of Nature, and every one of that Assembly hath a Right not only to kill any of the Subjects that they meet with in the streets, but also they all have a natural Right to cut one anothers throats, even while they sit together in Council, by his Principles. In this miserable condition of War is his Representative Aristocratical by Institution.

A Commonwealth by Conquest, he teacheth, is then acquired, when the Vanquished, to avoid present Death, Covenanteth, that so long as his Life; and the liberty of his Body is allowed him, the Victor shall have the Use of it at his pleasure. Here I would know how the Liberty of the Vanquished can be allowed, if the Victor have the Use of it at pleasure, or how it is possible for the Victor to perform his Covenant, except he could alwayes stand by eve-

The Preface.

ry particular man to protect his Life and Liberty?

In his Review and Conclusion he resolves, that an ordinary Subject hath liberty to submit, when the means of his Life is within the Guards and Garisons of the Enemy. It seems hereby that the Rights of Sovereignty by Institution may be forfeited, for the Subject cannot be at liberty to submit to a Conquerour, except his former Subjection be forfeited for want of Protection.

If his Conquerour be in the state of nature when he conquers, he hath a Right without any Covenant made with the conquered: If Conquest be defined to be the acquiring of Right of Sovereignty by Victory, why is it said, the Right is acquired in the Peoples Submission, by which they contract with the Victor, promising Obedience for Life and Liberty? hath not every one in the state of Nature a Right to Sovereignty before Conquest, which onely puts him in possession of his Right?

If his Conquerour be not in the state of Nature, but a Subject by Covenant, how can he get a Right of Sovereignty by Conquest, when neither he himself hath Right to Conquer, nor Subjects a liberty to Submit? since a former Contract lawfully made, cannot lawfully be broken by them.

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I wish the Title of the Book had not been of a Common-Wealth, but of a Weal Publick, or Common-weal, which is the true word, Carefully observed by our Translator of Bodin de Republica into English: Many ignorant men are apt by the Name of Commonwealth to understand a Popular Government, wherein Wealth and all things shall be Common, tending to the Levelling Community in the state of pure Nature.

OBSER-

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OBSERVATIONS

ON

Mr. *HOBBS's LEVIATHAN*:

OR, HIS

ARTIFICIAL MAN

A Commonwealth.

I.

IF God created only *Adam*, and of a Piece of him made the Woman; and if by Generation from them two, as parts of them, all Mankind be propagated: If also God gave to *Adam* not only the Dominion over the Woman and the Children that should issue from them, but also over the whole Earth to subdue it, and over all the Creatures on it, so that as long as *Adam* lived no man could claim or enjoy any thing but by Donation, Assignment, or Permission from him; I wonder how the *Right of Nature* can be imagined by Mr. *Hobs*, which he saith pag. 64. is, *a Liberty for each man to use his own Power as he will himself for Preservation of his own Life; a Condition of War of every one against every one; a Right of every man to every thing,*
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even to one anothers Body, especially since himself affirms, pag. 178. that originally the Father of every man was also his Sovereign Lord, with Power over him of Life and Death.

II

Mr. Hobs confesseth and believes it was never generally so, that there was such a *jus natura*; and if not generally, then not at all, for one exception bars all if he mark it well; whereas he imagines such a *Right of Nature* may be now practised in *America*, he confesseth a Government there of Families, which Government, how small or brutish soever (as he calls it) is sufficient to destroy his *jus naturale*.

• III.

I cannot understand how this *Right of Nature* can be conceived without imagining a Company of men at the very first to have been all Created together without any Dependency one of another, or as *Mushrooms* (*fungorum more*) they all on a sudden were sprung out of the Earth without any Obligation one to another, as Mr. Hobs's words are in his Book *De Cive*, cap. 8. sect. 3. the Scripture teacheth us otherwise, that all men came by Succession, and Generation from one man: we must not deny the Truth of the History of the Creation.

IV.

It is not to be thought that God would create man in a Condition worse than any Beasts, as if he made men to no other End by Nature but to destroy one
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one another; a Right for the Father to destroy or eat his Children, and for Children to do the like by their Parents, is worse than Canibals. *De Cive, cap. 1.*

This horrid Condition of pure Nature *sect. 10.*

when Mr. Hobs was charged with, his Refuge was to answer, *that no Son can be understood to be in this state of pure Nature*: which is all one with denying his own Principle, for if men be not free-born, it is not possible for him to assign and prove any other time for them to claim a Right of Nature to Liberty, if not at their Birth.

V.

But if it be allowed (which is yet most false) that a Company of men were at first without a common Power to keep them in Awe; I do not see why such a Condition must be called *a State of War of all men against all men*: indeed if such a Multitude of men should be created as the Earth could not well nourish, there might be Cause for men to destroy one another rather than perish for want of Food; but God was no such Niggard in the Creation, and there being Plenty of Sustenance and Room for all men, there is no Cause or Use of War till men be hindred in the Preservation of Life, so that there is no absolute Necessity of War in the State of pure Nature, it is the Right of Nature for every man to live in Peace, that so he may tend the Preservation of his life, which whilst he is in actual War he cannot do. War of it self as it is War preserves no mans Life, it only helps us to preserve and obtain the Means to live: if every man tend the Right of preserving Life, which
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may be done in Peace, there is no Cause of War.

VI.

But admit the State of Nature were the State of War; let us see what Help Mr. *Hobs* hath for it. It is a Principle of his, that *the Law of Nature is a Rule found out by Reason*, (I do think it is given by God) pag. 64. *forbidding a man to do that which is destructive to his Life, and to omit that by which he thinks it may be best preserved*: If the Right of Nature be a Liberty for a man to do any thing he thinks fit to preserve his Life, then in the first Place Nature must teach him that Life is to be preserved, and so consequently forbids to do that which may destroy or take away the means of life, or to omit that by which it may be preserved: and thus the *Right of Nature* and *the Law of Nature* will be all one: for I think Mr. *Hobs* will not say the Right of Nature is a Liberty for man to destroy his own Life. The Law of Nature might better have been said to consist in a Command to preserve or not to omit the Means of preserving Life, than in a Prohibition to destroy, or to omit it.

VII.

Another Principle I meet with, pag. 65. *If other men will not lay down their Right as well as he, then there is no Reason for any to devest himself of his*: Hence it follows, that if all the men in the World do not agree, no Common-wealth can be established; it is a thing impossible for all the men in the World, every man with every man, to Covenant to lay down their Right. Nay it is not possible to
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be done in the smallest Kingdom, though all men should spend their whole Lives in nothing else but in running up and down to Covenant.

VIII.

Right may be laid aside but not transfer'd, for pag. 65. *he that renounceth or passeth away his Right, giveth not to any other man a Right which he had not before, and reserves a Right in himself against all those with whom he doth not Covenant.*

IX.

Pag. 87. *The only way to erect a Common Power or a Commonwealth; is for men to confer all their Power and Strength upon one man, or one Assembly of men, that may reduce all their Wills by Plurality of Voices to one Will; which is to appoint one man or an Assembly of men to bear their Person, to submit their Wills to his Will: this is a real Unity of them all in one Person, made by Covenant of every man with every man, as if every man should say to every man, I authorise, and give up my Right of Governing my self to this man, or this Assembly of men, on this Condition, that thou give up thy Right to him, and authorise all his Actions. This done, the Multitude so united in one Person, is called a Commonwealth.*

To authorise and give up his Right of Governing himself, to confer all his Power and Strength, and to submit his Will to another, is to lay down his Right of resisting: for if Right of Nature be a Liberty to use Power for Preservation of Life, laying down of that Power must be a Relinquishing of Power

er to preserve or defend Life, otherwise a man relinquisheth nothing.

To reduce all the Wills of an Assembly by Plurality of Voices to one Will, is not a proper Speech, for it is not a Plurality but a Totality of Voices which makes an Assembly be of one Will, otherwise it is but the one Will of a major part of the Assembly, the Negative Voice of any one hinders the Being of the one Will of the Assembly, there is nothing more destructive to the true Nature of a lawful Assembly; than to allow a major part to prevail when the whole only hath Right. For a man to give up his Right to one that never Covenants to protect, is a great Folly, since it is neither in Consideration of some Right reciprocally transferred to himself, nor can he hope for any other Good, by standing out of the way, that the other may enjoy his own original Right without hinderance from him by reason of so much Diminution of Impediments. pag. 66.

X.

The Liberty, saith Mr. Hobs, whereof there is so frequent and honourable Mention in the Histories and Philosophy of the ancient Greeks and Romans, and in the Writings and Discourse of those that from them have received all their Learning in the Politiques, is not the Liberty of particular men, but the Liberty of the Commonwealth. Whether a Commonwealth be Monarchical or Popular, the Freedom is still the same. Here I find Mr. Hobs is much mistaken: for the Liberty of the Athenians and Romans was a Liberty only to be found in popular Estates, and not in Monarchies. This is clear by Aristotle, who calls a City a Community of Freemen, meaning every particular Citizen to be free. Not that
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every particular man had a Liberty to resist his Governour, or do what he list, but a Liberty only for particular men, to Govern and to be governed by Turns, ἀρχήν and ἀρχεῖσθαι are Aristotles words: this was a Liberty not to be found in hereditary Monarchies: so Tacitus mentioning the several Governments of Rome, joyns the Consulship and Liberty to be brought in by Brutus, because by the annual Election of Consuls, particular Citizens came in their Course to govern and to be governed. This may be confirmed by the Complaint of our Author, which followeth: *It is an easie thing for men to be deceived by the specious name of Liberty: and for want of Judgment to distinguish, mistake that for their private Inheritance or Birth-right which is the Right of the Publick only: And when the same Error is confirmed by the Authority of men in Reputation for their Writings on this Subject, it is no wonder if it produce Sedition and Change of Government. In the Western parts of the World, we are made to receive our Opinions concerning the Institution and Right of Common-wealths from Aristotle and Cicero, and other men, Greeks and Romans, that living under popular Estates, derived those Rights not from the Principles of Nature, but transcribed them into their Books out of the Practice of their own Commonwealths, which were Popular. And because the Athenians were taught (to keep them from Desire of changing their Government) that they were Free-men, and all that lived under Monarchy, Slaves: therefore Aristotle puts it down in his Politiques. In Democracy Liberty is to be supposed, for it's commonly held that no man is free in any other Government. So Cicero and other Writers grounded their civil Doctrine on the Opinions of the Romans, who were taught to hate Monarchy, at first, by them*
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that having deposed their Sovereign, shared amongst them the Sovereignty of Rome. And by reading of these Greek and Latine Authors, men from their Childhood have gotten a Habit (under a false shew of Liberty,) of favouring Tumults, and of licentious controuling the Actions of their Sovereigns.

XI.

Pag. 102. Dominion paternal not attained by Generation, but by Contract, which is the Childs Consent, either express, or by other sufficient Arguments declared. How a Child can express Consent, or by other sufficient Arguments declare it before it comes to the Age of Discretion I understand not, yet all men grant it is due before Consent can be given; and I take it Mr. Hobs is of the same Mind, pag. 249. where he teacheth, that Abrahams Children were bound to obey what Abraham should declare to them for Gods Law: which they could not be but in Vertue of the Obedience they owed to their Parents; they owed, not they covenanted to give. Also where he saith pag. 121. the Father and Master being before the Institution of Commonweals absolute Sovereigns in their own Families, how can it be said that either Children or Servants were in the State of *jus naturæ* till the Institutions of Commonweals? It is said by Mr. Hobs, in his Book *De Cive*, cap. 9. Section 7. the Mother originally hath the Government of her Children, and from her the Father derives his Right, because she brings forth and first nourisheth them. But we know that God at the Creation gave the Sovereignty to the man over the Woman, as being the nobler and principal Agent

Agent in Generation. As to the Objection, that *it is not known who is the Father to the Son, but by the discovery of the Mother, and that he is his Son whom the Mother will, and therefore he is the Mother's*: The answer is, that it is not at the Will of the Mother to make whom she will the Father, for if the Mother be not in possession of a Husband, the Child is not reckoned to have any Father at all; but if she be in the possession of a man, the Child, notwithstanding whatsoever the Woman discovereth to the contrary, is still reputed to be his in whose possession she is. No Child naturally and infallibly knows who are his true Parents, yet he must obey those that in common reputation are so, otherwise the Commandement of *Honour thy Father and thy Mother* were in vain, and no Child bound to the obedience of it.

XII.

If the Government of one man, and the Government of two men, make two several kinds 94. of Government, why may not the Government of two, and the Government of three do the like, and make a third? and so every differing Number a differing kind of Common-wealth. *If an Assembly of all* (as Mr. Hobs saith) *that will come together be a Democratie, and an Assembly of a part onely an Aristocratie, then if all that will come together be but a part onely, a Democratie and Aristocratie are all one; and why must an Assembly of part be called an Aristocratie, and not a Merocratie?*

It seems Mr. Hobs is of the mind that there is 87. but one kind of Government, and that is Mo-

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narchy;

narchy, for he defines a *Commonwealth* to be one Person, and an *Assembly* of men, or real *Unity* of them all in one and the same Person, the multitude so united he calls a *Common-wealth*: This his Moulding of a Multitude into one Person, is the generation of his great *Leviathan*, the King of the Children of Pride, pag. 167. Thus he concludes the Person of a Commonwealth to be a Monarch.

XIII.

I cannot but wonder Master *Hobs* should say, Page 112. *the Consent of a Subject to Sovereign Power is contained in these words, I Authorise, and do take upon me all his Actions, in which there is no restriction at all of his own former natural Liberty.* Surely here Master *Hobs* forgot himself, for before he makes the Resignation to go in these words also, *I give up my Right of governing my self to this man*: This is a restriction certainly of his own former natural Liberty, when he gives it away: and if a man allow his Sovereign to kill him, which Mr. *Hobs* seems to confess, how can he reserve a Right to defend himself? And if a man have a Power and Right to kill himself, he doth not Authorise and give up his Right to his Sovereign, if he do not obey him when he commands him to kill himself.

XIV.

Mr. *Hobs* saith, pag. 112. *No man is bound by the words themselves of his Submission to kill himself, or any other man: and consequently that the Obligation a man may sometimes have upon the Command of the Sovereign*

vereign to execute any dangerous or dishonourable Office, dependeth not on the words of our Submission, but on the Intention, which is to be understood by the End thereof. When therefore our refusal to Obey frustrates the End for which the Sovereignty was Ordained, then there is no liberty to refuse : otherwise there is. If no man be bound by the words of his Subjection to kill any other man, then a Sovereign may be denied the benefit of War, and be rendred unable to defend his People, and so the End of Government frustrated. If the Obligation upon the Commands of a Sovereign to execute a dangerous or dishonourable Office, dependeth not on the words of our Submission, but on the Intention, which is to be understood by the End thereof ; No man, by Mr. Hobs's Rules, is bound but by the words of his Submission; the Intention of the Command binds not, if the words do not : If the Intention should bind, it is necessary the Sovereign must discover it, and the People must dispute and judge it ; which how well it may consist with the Rights of Sovereignty, Master Hobs may consider : Whereas Master Hobs saith, the *Intention is to be understood by the End* ; I take it he means the End by Effect, for the End and the Intention are one and the same thing ; and if he mean the Effect, the Obedience must go before, and not depend on the understanding of the Effect, which can never be, if the Obedience do not precede it : In fine, he resolves, refusal to obey may depend upon the judging of what frustrates the End of Sovereignty, and what not, of which he cannot mean any other Judge but the People.

XV.

Mr. *Hobs* puts a case by way of Question. *A great many men together have already resisted the Sovereign Power unjustly, or committed some Capital Crime, for which every one of them expecteth death: whether have they not the liberty then to joyn together, and assist and defend one another? Certainly they have; for they but defend their Lives, which the Guilty man may as well do as the Innocent: There was indeed Injustice in the first breach of their Duty, their bearing of Arms subsequent to it, though it be to maintain what they have done, is no new unjust Act; and if it be only to defend their Persons, it is not Unjust at all. The only reason here alleged for the Bearing of Arms, is this; That there is no new unjust Act: as if the beginning only of a Rebellion were an unjust Act, and the continuance of it none at all. No better Answer can be given to this case, than what the Author himself hath delivered in the beginning of the same Paragraph, in these words; To resist the Sword of the Commonwealth in defence of another man, Guilty or Innocent, no man hath liberty: because such Liberty takes away from the Sovereign the Means of protecting us, and is therefore destructive of the very Essence of Government.* Thus he first answers the question, and then afterwards makes it, and gives it a contrary Answer: other Passages I meet with to the like purpose. He saith, Page 66. *A man cannot lay down the Right of Resisting them that Assault him by Force to take away his Life: The same may be said of Wounds, Chains, and Imprisonment.*

Page

Page 69. *A Covenant to defend my self from Force by Force, is void.* Pag. 68. *Right of Defending Life and Means of living, can never be abandoned.*

These last Doctrines are destructive to all Government whatsoever, and even to the *Leviathan* it self : hereby any Rogue or Villain may murder his Sovereign, if the Sovereign but offer by force to whip or lay him in the Stocks, since Whipping may be said to be wounding, and Putting in the Stocks an Imprisonment : so likewise every mans Goods being a Means of Living, if a man cannot abandon them, no Contract among men, be it never so just, can be observed : thus we are at least in as miserable condition of War, as Mr. Hobs at first by Nature found us.

XVI.

The Kingdom of God signifies, (saith Master Hobs, page 216.) a Kingdom constituted by the Votes of the People of Israel in a peculiar manner, wherein they choose God for their King, by Covenant made with him, upon God's promising them Canaan. If we look upon Master Hob's Text for this, it will be found that the People did not Constitute by Votes, and choose God for their King ; But by the Appointment first of God himself, the Covenant was to be a God to them : they did not contract with God, that if he would give them *Canaan*, they would be his Subjects, and he should be their King ; It was not in their power to choose whether God should be their God, yea, or nay : for it is confessed, *He reigned naturally over all by his Might.* If God Reigned naturally, he had a Kingdom,

and Sovereign Power over his Subjects, not acquired by their own Consent. This Kingdom, said to be constituted by the Votes of the People of *Israel*, is but the Vote of *Abraham* only; his single Voice carried it; he was the Representative of the People. For at this Vote, it is confessed, that the Name of *King* is not given to God, nor of *Kingdom* to *Abraham*; yet the thing, if we will believe Master *Hbs*, is all one. If a Contract be the mutual transferring of Right, I would know what Right a People can have to transferr to God by Contract. Had the People of *Israel* at Mount *Sinai* a Right not to obey God's Voice? If they had not such a Right, what had they to transferr?

The Covenant mentioned at Mount *Sinai* was but a Conditional Contract, and God but a Conditional King; and though the People promised to obey Gods word, yet it was more than they were able to perform, for they often disobeyed Gods Voice, which being a breach of the Condition, the Covenant was void, and God not their King by Contract.

It is complained by God, *They have rejected me that I should reign over them*: but it is not said, according to their Contract; for I do not find that the Desiring of a King was a breach of their Contract of Covenant, or disobedience to the Voice of God: there is no such Law extant.

The People did not totally reject the Lord, but in part onely, out of timorousness, when they saw *Nabash* King of the Children of *Ammon* come against them; they distrusted that God would not suddenly provide for their Deliverance, as if they had had alwayes a King in readines to go up presently

sently to fight for them: This Despair in them who had found so many miraculous deliverances under Gods Government, was that which offended the Lord so highly: they did not desire an Alteration of Government, and to cast off Gods Laws, but hoped for a certainer and speedier deliverance from danger in time of War. They did not petition that they might choose their King themselves, that had been a greater sin; and yet if they had, it had not been a total rejection of Gods Reigning over them, as long as they desired not to depart from the Worship of God their King, and from the Obedience of his Laws. I see not that the Kingdom of God was cast off by the Election of *Saul*, since *Saul* was chosen by God himself, and governed according to Gods Laws. The Government from *Abraham* to *Saul* is no where called the Kingdom of God, nor is it said, that the Kingdom of God was cast off at the Election of *Saul*.

Mr. Hobs allows, that *Moses alone had, next under God, the Sovereignty over the Israelites*, p. 252. but he doth not allow it to *Joshua*, but will have it descend to *Eleazar* the High-Priest, *Aaron's* son. His Proof is, God expressly saith concerning *Joshua*, *He shall stand before Eleazar, who shall ask Counsel for him before the Lord*, (after the judgment of *Urim*, is omitted by Mr. Hobs) *at his word they shall go out, &c.* therefore the *Supreme Power of making Peace and War was in the Priest*.
 Answ. The Work of the High-Priest was onely *Ministerial*, not *Magisterial*; he had no power to Command in War, or to Judge in Peace; onely when the Sovereign or Governour did go up to

War, he enquired of the Lord by the Ministry of the High Priest, and, as the *Hebrews* say, the Enquirer with a soft voice, as one that prayeth for himself, asked: and forthwith the Holy Ghost came upon the Priest, and he beheld the Brest-plate, and saw therein by the Vision of Prophecy, *Go up*, or *go not up*, in the letters that shewed forth themselves upon the Brest-plate before his face: then the Priest answered him, *Go up*, or *Go not up*. If this Answer gave the Priest Sovereignty, then neither King *Saul* nor King *David* had the Sovereignty, who both asked Counsel of the Lord by the Priest.

OBSER-



OBSERVATIONS
ON

Mr. Milton

Against

S A L M A S I U S.

I.

AMong the many Printed Books, and several Discourses touching the Right of *Kings*, and the Liberty of the *People*, I cannot find that as yet the first and chief Point is agreed upon, or indeed so much as once disputed. The word *King* and the word *People* are familiar, one would think every simple man could tell what they signified ; but upon Examination it will be found, that the learnedst cannot agree of their Meaning.

Ask *Salmasius* what a King is, and he will teach us, that a King is he who hath the Supreme Power of
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the Kingdom, and is accountable to none but God, and may do what he please, and is free from the Laws. This Definition *J. M.* abominates as being the Definition of a Tyrant: And I should be of his Mind, if he would have vouchsafed us a better, or any other Definition at all, that would tell us how any King can have a Supreme Power, without being freed from humane Laws: To find fault with it, without producing any other, is to leave us in the Dark: but though *Mr. Milton* brings us neither Definition nor Description of a King, yet we may pick out of several Passages of him, something like a Definition, if we lay them together. He teacheth us that *Power was therefore given to a King by the People, that he might see by the Authority to him committed, that nothing be done against Law: and that he keeps our Laws, and not impose upon us his own: Therefore there is no Regal Power but in the Courts of the Kingdom, and by them, pag. 155.*

And again he affirmeth, *the King cannot Imprison, Fine or punish any man, except he be first cited into some Court; where not the King, but the usual Judges give Sentence, pag. 168. and before we are told, not the King, but the Authority of Parliament doth set up and take away all Courts, pag. 167.*

Lo here the Description of a King, He is one to whom the People give Power, to see that nothing be done against Law: and yet he saith there is no Regal Power but in the Courts of Justice and by them, where not the King, but the usual Judges give Sentence. This Description not only strips the King of all Power whatsoever, but puts him in a Condition below the meanest of his Subjects.

Thus

Thus much may shew, that all men are not agreed what a King is. Next, what the word *People* means is not agreed upon: ask *Aristotle* what the *People* is, and he will not allow any Power to be in any but in free Citizens. If we demand, who be free Citizens? That he cannot resolve us; for he confesseth that *he that is a free Citizen in one City, is not so in another City*. And he is of Opinion that *no Artificer should be a free Citizen, or have Voice in a well ordered Commonwealth*; he accounts a *Democratie* (which word signifies the Government of the *People*) *to be a corrupted sort of Government*; he thinks *many men by Nature born to be Servants, and not fit to govern as any part of the People*. Thus doth *Aristotle* curtail the *People*, and cannot give us any certain Rule to know who be the *People*: Come to our Modern Politicians, and ask them who the *People* is, though they talk big of the *People*, yet they take up, and are content with a few *Representors* (as they call them) *of the whole People*; a Point *Aristotle* was to seek in, neither are these *Representors* stood upon to be the whole *People*, but the *major part of these Representors must be reckoned for the whole People*; nay *J. M.* will not allow the *major part* of the *Representors* to be the *People*, but the *sounder and better part only* of them; and in right down terms he tells us, pag. 126. *to determine who is a Tyrant, he leaves to Magistrates, at least to the uprighter sort of them and of the People*, pag. 7. *though in number less by many, to judge as they find cause*. If the *sounder, the better, and the uprighter Part* have the Power of the *People*, how shall we know, or who shall judge who they be?

II.

One Text is urged by Mr. Milton, for the Peoples Power: Deut. 17. 14. *When thou art come into the Land which thy Lord thy God giveth thee, and shalt say, I will set a King over me, like as all the Nations about me.* It is said, by the Tenure of Kings these words confirm us that the Right of Choosing, yea of Changing their own Government, is by the Grant of God himself in the People: But can the foretelling or forewarning of the Israelites of a wanton and wicked Desire of theirs, which God himself condemned, be made an Argument that God gave or granted them a Right to do such a wicked thing? or can the Narration and reproving of a Future Fact, be a Donation and approving of a present Right, or the Permission of a Sin be made a Commission for the doing of it? The Author of his Book against *Salmasius*, falls so far from making God the Donor or Grantor, that he cites him only for a Witness, *Teste ipso Deo penes populos arbitrium semper fuisse, vel ea, quæ placeret forma reipub. utendi, vel hanc in aliam mutandi; de Hebræis hoc disertè dicit Deus: de reliquis non abnuit.*

That here in this Text God himself being Witness, there was always a Power in the People, either to use what Form of Government they pleased, or of changing it into another: God saith this expressly of the Hebrews, and denies it not of others. Can any man find that God in this Text expressly saith, that there was always a Right in the People to use what Form of Government they please? The Text not warranting this Right of the People, the Foundation of the Defence

Defence of the People is quite taken away ; there being no other Grant or proof of it pretended.

2. Where it is said, that *the Israelites desired a King, though then under another Form of Government* ; in the next line but one it is confessed, they had a King at the time when they desired a King, which was God himself, and his Vice-roy *Samuel* ; and so saith God, *They have not rejected thee ; but they have rejected me, that I should not reign over them* ; yet in the next Verse God saith, *As they have forsaken me, so do they also unto thee*. Here is no Shew of any other Form of Government but Monarchy : God by the Mediation of *Samuel* reigned, who made his Sons Judges over *Israel* ; when one man constitutes Judges, we may call him a King ; or if the Having of Judges do alter the Government, then the Government of every Kingdom is altered from Monarchy, where Judges are appointed by Kings : it is now reckoned one of the Duties of Kings to judge by their Judges only.

Where it is said, *He shall not multiply to himself Horses, nor Wives, nor Riches, that he might understand that he had no Power over others, who could Decree nothing of himself, extra Legem* ; if it had said, *contra legem Dei*, it had been true, but if it meant *extra legem humanam*, it is false.

4. If there had been any Right given to the People, it seems it was to the Elders onely ; for it is said, it was the Elders of *Israel* gathered together, petitioned for a King ; it is not said, it was all the People, nor that the People did choose the Elders, who were the Fathers and Heads of Families, authorized by the Judges.

5. Where

5. Where it is said, *I will set a King over me like as all the Nations about me.* To set a King, is, not to choose a King, but by some solemn publick Act of Coronation, or otherwise to acknowledge their Allegiance to the King chosen; It is said, thou shalt set him King whom the Lord thy God shall choose. The Elders did not desire to choose a King like other Nations, but they say, *now make us a King to judge us like all the Nations.*

III.

As for *Dauids* Covenant with the Elders when he was annointed, it was not to observe any Laws or Conditions made by the People, for ought appears; but to keep Gods Laws and serve him, and to seek the Good of the People, as they were to protect him.

6. The *Reubenites* and *Gadites* promise their Obedience, not according to their Laws or Conditions agreed upon, but in these words *All that thou cammandest us we will do, and whithersoever thou sendst us we will go; as we barked to Moses in all things, so will we barken unto thee: only the Lord thy God be with thee as he was with Moses.* Where is there any Condition of any humane Law expressed? Though the rebellious Tribes offered Conditions to *Rehoboam*; where can we find, that for like Conditions not performed, all *Israel* deposed *Samuel*? I wonder Mr. *Milton* should say this, when within a few Lines after he professeth, that *Samuel* had governed them uprightly.

IV.

IV.

Jus Regni is much stumbled at, and the Definition of a King which saith *His Power is supreme in the Kingdom, and he is accountable to none but to God, and that he may do what he please, and is not bound by Laws*: it is said if this Definition be good, no man is or ever was, who may be said to be a Tyrant; p. 14. for *when he hath violated all divine and humane Laws, nevertheless he is a King, and guiltless jure Regio*. To this may be answered, That the Definition confesseth he is accountable to God, and therefore not guiltless if he violate Divine Laws: Humane Laws must not be shuffled in with Divine, they are not of the same Authority: if humane Laws bind a King, it is impossible for him to have Supreme Power amongst men. If any man can find us out such a kind of Government, wherein the supreme Power can be, without being freed from humane Laws, they should first teach us that; but if all sorts of popular Government that can be invented, cannot be one Minute, without an Arbitrary Power, freed from all humane Laws: what reason can be given why a Royal Government should not have the like Freedom? if it be Tyranny for one man to govern arbitrarily, why should it not be far greater Tyranny for a multitude of men to govern without being accountable or bound by Laws? It would be further enquired how it is possible for any Government at all to be in the World without an arbitrary Power; it is not Power except it be arbitrary: a legislative Power cannot be without being absolved from humane Laws, it cannot be shewed how a
King

King can have any Power at all but an arbitrary Power. We are taught, that *Power was therefore given to a King by the People, that he might see by the Authority to him committed, that nothing be done against Law; and that he keep our Laws, and not impose upon us his own: therefore there is no Royal Power, but in the Courts of the Kingdom, and by them*, pag. 155. And again it is said, *the King cannot Imprison, Fine or Punish any man except he be first cited into some Court, where not the King but the usual Judges give Sentence*, pag. 168. and before, we are told, *not the King, but the Authority of Parliament doth set up and take away all Courts*, pag. 167.

Lo here we have Mr. Milton's perfect Definition of a King: He is one to whom the People gave *Power to see that nothing be done against Law, and that he keep our Laws, and not impose his own*. Whereas all other men have the Faculty of Seeing by Nature, the King only hath it by the Gift of the People, other Power he hath none; he may see the Judges keep the Laws if they will; he cannot compell them, for he may not Imprison, Fine, nor punish any man; the Courts of Justice may, and they are set up and put down by the Parliament: yet in this very Definition of a King, we may spy an arbitrary Power in the King; for he may wink if he will: and no other Power doth this Description of a King give, but only a Power to see: whereas it is said *Aristotle doth mention an absolute Kingdom, for no other Cause, but to shew how absurd, unjust and most tyrannical it is*. There is no such thing said by *Aristotle*, but the contrary, where he saith, that a *King according to Law makes no sort of Government*; and after he had reckoned up five sorts of Kings, he

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concludes, that there were in a manner but two sorts, the *Lacedemonian King*, and the *Absolute King*; whereof the first was but as General in an Army, and therefore no King at all, and then fixes and rests upon the *Absolute King. who ruleth according to his own Will.*

V.

If it be demanded what is meant by the word *People*? 1. Sometimes it is *Populus universus*, and then every Child must have his Consent asked, which is impossible. 2. Sometimes it is *pars major*, and sometimes it is *pars potior & sanior*; How the major part, where all are alike free, can bind the minor part, is not yet proved.

But it seems the major part will not carry it, nor be allowed, except they be the *better part, and the sounder part*. We are told, *the sounder part implored the help of the Army, when it saw it self and the Commonwealth betrayed*; and that the *Souldiers judged better than the Great Council, and by Arms saved the Commonwealth, which the Great Council had almost damned by their Votes*, p. 7.

Here we see what the *People* is; to wit, *the sounder part*; of which the *Army* is the judge: thus, upon the matter, the *Souldiers* are the *People*: which being so, we may discern where the *Liberty* of the *People* lieth, which we are taught to consist all for the most part in the power of the *Peoples Choosing what Form of Government they please* pag. 61. A miserable *Liberty*, which is onely to choose to whom we will give our *Liberty*, which we may not keep. See more concerning the *People*, in a Book entituled *The Anarchy*, p. 8, 9, 10, 11, 12, 13, 14.

VI.

We are taught, that *a Father and a King are things most diverse. The Father begets us, but not the King; but we create the King: Nature gives a Father to the People, the People give themselves a King: If the Father kill his Son he loseth his life, why should not the King also?* p. 34.

Ans. Father and King are not so diverse; it is confessed, that at first they were all one, for there is confessed *Paternum imperium & hereditarium*, p. 141. and this Fatherly Empire, as it was of it self *hereditary*, so it was *alienable* by Patent, and *seizable* by an Usurper, as other goods are: and thus every King that now is, hath a Paternal Empire, either by Inheritance, or by Translation, or Usurpation; so a Father and a King may be all one.

A Father may dye for the Murther of his Son, where there is a Superiour Father to them both, or the Right of such a Supreme Father; but where there are onely Father and Sons, no Sons can question the Father for the death of their Brother: the reason why a King cannot be punished, is not because he is excepted from Punishment, or doth not deserve it, but because there is no Superiour to judge him, but God onely, to whom he is reserved.

VII.

It is said thus, *He that takes away from the People the power of Choosing for themselves what Form of Government they please, he doth take away that wherein all Civil Liberty almost consists*, p. 65. If almost all Liberty

ty be in Choosing of the Kind of Government, the People have but a poor Bargain of it, who cannot exercise their Liberty, but in Chopping and Changing their Government, and have liberty onely to give away their Liberty, than which there is no greater mischief, as being the cause of endless Sedition.

VIII.

If there be any Statute in our Law, by which thou canst find that Tyrannical Power is given to a King, that Statute being contrary to Gods Will, to Nature and Reason, understand that by that general and primary Law of ours, that Statute is to be repealed, and not of force with us, p.153. Here, if any man may be judge, what Law is contrary to Gods Will, or to Nature, or to Reason, it will soon bring in Confusion: Most men that offend, if they be to be punished or fined, will think that Statute that gives all Fines and Forfeitures to a King, to be a Tyrannical Law; thus most Statutes would be judged void, and all our Fore-fathers taken for Fools or Madmen, to make all our Laws to give all Penalties to the King.

IX.

The sin of the Children of *Israel* did lye, not in Desiring a King, but in desiring such a King like as the Nations round about had; they distrusted God Almighty, that governed them by the Monarchical Power of *Samuel*, in the time of oppression, when God provided a Judge for them; but they desired a perpetual and hereditary King, that they might never want: in Desiring a King they could not sin,

for it was but Desiring what they enjoyed by Gods special Providence.

X.

Men are perswaded, that in Making of a Covenant, something is to be performed on both parts by mutual Stipulation; which is not alwayes true: for we find God made a *Covenant with Noah and his Seed, with all the Fowl and the Cattel, not to destroy the Earth any more by a flood.* This Covenant was to be kept on Gods part, neither *Noah*, nor the Fowl, nor the Cattel were to perform any thing by this Covenant. On the other side, *Gen. 17. 9, 10.* God covenants with *Abraham*, saying, *Thou shalt keep my Covenant,----every male child among you shall be circumcised.* Here it is called Gods Covenant, though it be to be performed onely by *Abraham*; so a Covenant may be called the Kings Covenant, because it is made to him, and yet to be performed only by the People. So also, *2 Kin. 11. 17.* *Jehoiada made a Covenant between the Lord, and the King, and the People, that they should be the Lords People.* Between the King also and the People, which might well be, that the People should be the Kings Servants: and not for the King's covenanting to keep any Humane Laws, for it is not likely the King should either Covenant, or take any Oath to the People when he was but seven years of age, and that never any King of *Israel* took a Coronation-Oath that can be shewed: when *Jehoiada* shewed the King to the Rulers in the House of the Lord, he took an Oath of the People: he did not Article with them, but saith the next Verse, *Commanded them to keep a Watch of the Kings House, and that they should compass the King round about, every*

ry man with his weapon in his hands, and he that cometh within the Ranges, let him be slain.

XI.

To the Text, *Where the word of a King is, there is Power, and who may say unto him, What dost thou?* J. M. gives this Answer: *It is apparent enough, that the Preacher in this place gives Precepts to every private man, not to the great Sanhedrin, nor to the Senate-- shall not the Nobles, shall not all the other Magistrates, shall not the whole People dare to mutter, so oft as the King pleaseth to dote?* We must here note, that the great Council, and all other Magistrates or Nobles, or the whole People, compared to the King, are all but private men, if they derive their Power from him: they are Magistrates under him, and out of his Presence, for when he is in place, they are but so many private men. J. M. asks, *Who swears to a King, unless the King on the other side be sworn to keep Gods Laws, and the Laws of the Countrey?* We find that the Rulers of Israel took an Oath at the Coronation of *Jeboash*: but we find no Oath taken by that King, no not so much as to Gods Laws, much less to the Laws of the Countrey,

XII.

A Tyrant is he, who regarding neither Law nor the Common Good, reigns onely for himself and his Faction; p. 19. In his Defence he expresseth himself thus, *He is a Tyrant who looks after only his own, and not his Peoples profit,* Eth. l. 10. p. 189.

1. If it be Tyranny not to regard the Law, then all Courts of Equity, and Pardons for any Offences must be taken away : there are far more Sutes for relief against the Laws, than there be for the observation of the Laws: there can be no such Tyranny in the World as the Law, if there were no Equity to abate the rigour of it. *Summum Jus* is *Summa Injuria*; if the Penalties and Forfeitures of all Laws should still be exacted by all Kings, it would be found, that the greatest Tyranny would be, for a King to govern according to Law; the Fines, Penalties, and Forfeitures of all Laws are due to the Supreme Power onely, and were they duely paid, they would far exceed the Taxes in all places. It is the chief happiness of a Kingdom, and their chief Liberty, not to be governed by the Laws Only.

2. *Not to regard the Common Good, but to reign only for himself*, is the supposition of an impossibility in the judgment of *Aristotle*, who teacheth us, that *the despotical Power cannot be preserved, except the Servant, or he in subjection, be also preserved*. The truth of this strongly proves, That it is in Nature impossible to have a Form of Government that can be for the destruction of a People, as Tyranny is supposed; if we will allow People to be governed, we must grant, they must in the first place be preserved, or else they cannot be governed.

Kings have been, and may be vitious men, and the Government of one, not so good as the Government of another; yet it doth not follow, that the Form of Government is, or can be in its own nature ill, because the Governour is so: it is Anarchy, or want of Government, that can totally destroy a Nation. We cannot find any such Government as Tyranny

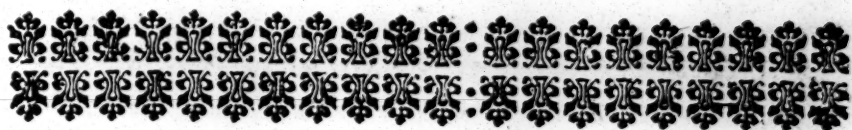
ranny mentioned or named in Scripture, or any word in the Hebrew Tongue to express it. After such time as the Cities of *Greece* practised to shake off Monarchy, then, and not till then, (which was after *Homer's* time) the name of Tyrant was taken up for a word of Disgrace, for such men as by craft or Force wrested the Power of a City from a Multitude to one man onely; and not for the *exercising*, but for the *ill-obtaining* of the Government: but now every man that is but thought to govern ill, or to be an ill man, is presently termed a Tyrant, and so judged by his Subjects. Few remember the Prohibition, *Exod. 22. 28. Thou shalt not revile the Gods, nor curse the Ruler of thy People*: and fewer understand the reason of it. Though we may not one judge another, yet we may speak evil or revile one another, in that which hath been lawfully judged, and upon a Tryal wherein they have been heard and condemned: this is not to judge, but onely to relate the judgment of the Ruler. To speak evil, or to revile a Supreme Judge, cannot be without judging him who hath no Superiour on Earth to judge him, and in that regard must alwayes be presumed innocent, though never so ill, if he cannot lawfully be heard.

J. M. That will have it Tyranny in a King not to regard the Laws, doth himself give as little Regard to them as any man; where he reckons, that *Contesting for Privileges, Customs, Forms, and that old entanglement of Iniquity, their gibrish Laws, are the Badges of ancient Slavery. Tenure, pag. 3. a Disputing Presidents, Forms and Circumstances, pag. 5.*

J. M. is also of opinion, That, *If at any time our Fore-fathers, out of baseness, have lost any thing of their*

Right, that ought not hurt us ; they might if they would promise Slavery for themselves, for us certainly they could not, who have alwayes the same Right to free our selves, that they had to give themselves to any man in Slavery. This Doctrine well practised, layeth all open to constant Anarchy.

Lastly, If any desire to know what the Liberty of the People is, which *J. M.* pleads for, he resolves us, saying, *That he that takes away from the People the Right of Choosing what Form of Government they please, takes away truly that in which all Liberty doth almost consist.* It is well said by *J. M.* that all Liberty doth almost consist in Choosing their Form of Government, for there is another liberty exercised by the People, which he mentions not, which is the liberty of the Peoples Choosing their Religion ; every man may be of any Religion, or of no Religion ; *Greece and Rome* have been as famous for *Polytheisme*, or multitudes of gods, as of Governours ; and imagining Aristocratie and Democratie in Heaven, as on Earth.



OBSERVATIONS

UPON

H. Grotius

DE JURE

BELLI, & PACIS.

IN most Questions of Weight and Difficulty concerning the Right of War, or Peace, or Supreme Power, *Grotius* hath Recourse to the Law of Nature or of Nations, or to the Primitive Will of those men who first joyned in Society. It is necessary therefore a little to lay open the Variety or Contrariety in the Civil and Canon Law, and in *Grotius* himself, about the Law of Nature and Nations, not with a Purpose to raise any Contention about Words or Phrases, but with a Desire to reconcile or expound the Sense of different Terms.

Civi-

Civilians, Canonists, Politicians and Divines, are not a little perplexed in distinguishing between the Law of Nature, and the Law of Nations; about *Jus Naturæ*, and *Jus Gentium*, there is much Dispute by such as handle the Original of Government, and of Property and Community.

The Civil Law in one Text allows a threefold Division of Law, into *Jus Naturæ*, *Jus Gentium*, and *Jus Civile*. But in another Text of the same Law, we find only a twofold Division, into *Jus Civile*, and *Jus Gentium*. This latter Division the Law takes from *Gaius*, the former from *Ulpian*, who will have *Jus Naturale* to be that which Nature hath taught all Creatures, *quod Natura omnia animalia Docuit*, but for this he is confuted by *Grotius*, *Salmasius*, and others, who restrain the Law of Nature only to men using Reason; which makes it all one with the Law of Nations; to which the Canon Law consents, and saith, That *Jus Naturale est commune omnium nationum: That which Natural Reason appoints all men to use, is the Law of Nations*, saith *Theophilus* in the Text of the Civil Law: and in the second Book of the *Instit. cap. 1.* *Jus Naturæ* is confounded with *Jus Gentium*.

As the Civilians sometimes confound and sometimes separate the Law of Nature and the Law of Nations, so other-whiles they make them also contrary one to the other. By the Law of Nature all men are born free; *Jure naturali omnes liberi nascuntur*. But Servitude is by the Law of Nations: *Jure Gentium Servitus invasit*, saith *Ulpian*.

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And the Civil Law not only makes the Law of Nature and of Nations contrary, but also will have the Law of Nations contrary to it self. *War*, saith the Law, *was brought in by the Law of Nations.* *Ex jure gentium introducta bella*, and yet the Law of Nations saith, *Since Nature hath made us all of one Kindred, it follows it is not lawful for one man to lye in Wait for another.* *Cum inter nos cognitionem quandam natura constituit, consequens est hominem homini insidiari nefas esse*, saith *Florentinus*.

Again, the Civil Law teacheth, that from the Law of Nature proceeds the Conjunction of man and women, the Procreation and Education of Children. But as for Religion to God, and Obedience to Parents it makes it to be by the Law of Nations.

To touch now the Canon Law, we may find in one place that men are governed either by the Law of Nature, or by Customs. *Homines reguntur Naturali jure, aut moribus.* The Law of Nations they call a Divine Law, the Customs a humane Law; *Leges aut divine sunt aut humane; divine naturâ, humane moribus constant.* But in the next place the Canon Law makes *Jus* to be either *Naturale*, aut *Civile*, aut *Gentium*. Though this Division agree in Terms with that of *Ulpian* in the Civil Law, yet in the Explication of the Terms there is Diversity; for what one Law makes to belong to the Law of Nature, the other refers to the Law of Nations, as may easily appear to him that will take the Pains to compare the Civil and Canon Law in these Points.

36 *Observations upon H. Grotius*

A principal Ground of these Diversities and Contrarieties of Divisions, was an Error which the Heathens taught, that *all things at first were common*, and that *all men were equal*. This Mistake was not so heinous in those Ethnick Authors of the Civil Laws, who wanting the Guide of the History of *Moses*, were fain to follow Poets and Fables for their Leaders. But for Christians, who have read the Scriptures, to dream either of a *Community of all things*, or an *Equality of all Persons*, is a Fault scarce pardonable.

To salve these apparent Contrarieties of *Community* and *Property*; or *Equality* and *Subjection*: the Law of *Jus Gentium* was first invented; when that could not satisfy, to mend the matter, this *Jus Gentium*, was divided into a *Natural Law of Nations*, and an *Humane Law of Nations*; and the Law of Nature into a *Primary* and a *Secondary* Law of Nature; Distinctions which make a great sound, but edifie not at all if they come under Examination.

If there hath been a time when all things were common, and all men equal, and that it be otherwise now; we must needs conclude that the Law by which all things were common, and men equal, was contrary to the Law by which now things are proper, and men subject.

If we will allow *Adam* to have been Lord of the World and of his Children, there will need no such Distinctions of the Law of Nature and of Nations: For the Truth will be, that whatsoever the Heathens comprehended under these two Laws, is comprised in the Moral Law.

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That the Law of Nature is one and the same with the Moral, may appear by a Definition given by *Grotius*. *The Law of Nature* (saith he) is the Dictate of Reason, shewing that in every Action by the agreeing or disagreeing of it with natural Reason, there is a moral Honesty or Dishonesty, and consequently that such an Action is commanded or forbidden by God the Author of Nature. I cannot tell how *Grotius* would otherwise have defined the Moral Law. And the Canon Law grants as much; teaching that the Law of Nature is contained in the Law and the Gospel: *Whatsoever ye will that men do, &c. Mat. 7.*

The Term of *Jus Naturæ* is not originally to be found in Scripture, for though *T. Aquinas* takes upon him to prove out of the 2. to the Romans, that there is a *Jus Naturæ*, yet *St. Paul* doth not use those express Terms; his words are, *The Gentiles which have not the Law, do by Nature the things contained in the Law, these having not the Law are a Law unto themselves*: He doth not say, Nature is a Law unto them, but they are a Law unto themselves. As for that which they call the Law of Nations, it is not a Law distinct, much less opposite to the Law of Nature, but it is a small Branch or Parcel of that great Law; for it is nothing but the Law of Nature, or the moral Law between Nations. The same Commandment that forbids one Private man to rob another, or one Corporation to hurt another Corporation, obliges also one King not to rob another King, and one Commonwealth not to spoil another: the same Law that enjoyns Charity to all men, even to Enemies,

mies, binds Princes and States to shew Charity to one another, as well as private Persons.

And as the *Common, or Civil Laws* of each Kingdom which are made against Treason, Theft, Murder, Adultery, or the like, are all and every one of them grounded upon some particular Commandment of the moral Law; so all the Laws of Nations must be subordinate and reducible to the moral Law.

The Law of Nature, or the moral Law is like the main Ocean, which though it be one entire Body, yet several Parts of it have distinct Names, according to the diversity of the Coasts on which they border. So it comes to pass that the Law of Nations which is but a part of the Law of Nature, may be sub-divided almost *in infinitum*, according to the Variety of the Persons, or Matters about which it is conversant.

The Law of Nature or the divine Law is general, and doth only comprehend some Principles of Morality notoriously known of themselves, or at the most is extended to those things which by necessary and evident Inference are consequent to those Principles. Besides these, many other things are necessary to the well-governing of a Commonwealth: and therefore it was necessary that by Humane Reason something more in particular should be determined concerning those things which could not be defined by Natural Reason alone; hence it is that Humane Laws be necessary, as Comments upon the Text of the Moral Law: and of this Judgment is *Aquinas*, who teacheth, that *necessitas legis humane manat ex eo, quod Lex*
natu-

naturalis, vel Divina, generalis est, & solum complectitur quedam principia morum per se nota, & ad summum extenditur ad ea quæ necessaria & evidenti elatione ex illis principiis consequuntur: præter illa verò multa alia sunt necessaria in republica ad ejus rectam Gubernationem: & ideo necessarium fuit ut per humanam rationem aliqua magis in particulari determinarentur circa ea quæ per solam rationem naturalem definiri non possunt. Ludo. Molin de Just. Thus much may suffice to shew the Distractions in and between the *Civil and Common Laws* about the Law of Nature and Nations. In the next place we are to consider how *Grotius* distinguisheth these Laws.

To maintain the Community of things to be Natural, *Grotius* hath framed new Divisions of the Law of Nature. First, in his Preface to his Books *De Jure Belli & Pacis*, he produceth a Definition of the Law of Nature, in such doubtful, obscure and reserved Terms, as if he were diffident of his Undertaking: Next in his first Book and first Chapter he gives us another Distribution, which differs from his Doctrine in his Preface.

In his Preface his Principle is, that the *Appetite of Society, that is to say, of Community, is an Action proper to man.* Here he presently corrects himself with an Exception, that *some other Creatures are found to desire Society*; and withal he answers the Objections thus, that *this Desire of Society in brute Beasts, comes from some external Principle.* What he means by *Principium intelligens extrinsecum*, I understand not, nor doth he explain, nor is it material, nor is the Argument he useth
to

to any purpose; for, admitting all he saith to be true, yet his Principle fails; for the Question is not, from what Principle this Desire of Society proceeds in Beasts, but whether there be such a Desire or no. Besides, here he takes the Appetite of Society and Community to be all one, whereas many live in Society, which live not in Community.

Next he teacheth, that *the keeping of Society (custodia Societatis) which in a rude manner (saith he) we have now expressed, is the fountain of that Law which is properly so called.* I conceive by the Law properly so called, he intends the Law of Nature, though he expresses not so much: And to this appetite of *Sociable Community* he refers *Alieni Abstinencia*; but herein it may be he forgets himself, for where there is *Community* there is neither *meum* nor *tuum*, nor yet *alienum*; and if there be no *alienum*, there can be no *alieni abstinencia*. To the same purpose he saith, that by the *Law of Nature* men must stand to bargains, *Juris naturæ sit stare pactis*. But if all things were common by Nature, how could there be any bargain?

Again, Grotius tells us, that *from this signification of the Law there hath flowed another larger, which consists (saith he) in Discerning what delights us or hurts us, and in judging how things should be wisely distributed to each one.* This latter he calls the looser *Law of Nature*; the former, *Jus Sociale*, the *Law of Nature*, strictly, or properly taken. And these two *Laws of Nature* should have place (saith he) though men should deny there were
a God:

a God. But to them that believe there is a God, there is another Original of Law, beside the Natural, coming from the free Will of God, to the which our own Understanding tells us we must be subject.

Thus have I gathered the Substance of what is most material concerning the Law of Nature, in his Preface.

If we turn to the Book it self, we have a division of the Law into



In the Definition of *Jus Naturale* he omits those Subtilties of *Jus Naturæ propriè dictum*, and *quod laxius ita dicitur*, which we find in his Preface, and gives such a plain Definition, as may fitly agree to the Moral Law. By this it seems the Law of Nature and the Moral Law are one and the same.

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Whereas

Whereas he affirmeth, that *the Actions about which the Law of Nature is conversant, are lawful or unlawful of themselves, and therefore are necessarily commanded or forbidden by God: by which mark this Law of Nature doth not onely differ from Humane Law, but from the Divine voluntary Law, which doth not command or forbid those things, which of themselves, and by their own nature are lawful or unlawful, but makes them unlawful by forbidding them, and due by commanding them.* In this he seems to make the *Law of Nature* to differ from *Gods Voluntary Law*; whereas, in God, *Necessary* and *Voluntary* are all one. *Salmasius de Usuris*, in the twentieth Chapter, condemns this opinion of *Grotius*; though he name him not, yet he means him, if I mistake not.

In the next place, I observe his saying, that some things are by the *Law of Nature*, not *propre*, but *reductivè*; and that the *Law of Nature* deals not onely with those things which are beside the *Will of Man*, but also with many things which follow the act of *Mans Will*: so *Dominion*, such as is now in Use, *mans Will* brought in: but now that it is brought in, it is against the *Law of Nature*, to take that from thee against thy *Will*, which is in thy *Dominion*.

Yet for all this *Grotius* maintains that the *Law of Nature* is so immutable, that it cannot be changed by God himself. He means to make it good with a Distinction, *Some things* (saith he) *are by the Law of Nature, but not simply, but according to the certain State of things; so the common use of things was natural as long as Dominion was not brought*

brought in; and Right for every man to take his own by Force, before Laws were made. Here if Grotius would have spoken plain, in stead of *but not simply, but according to the certain State of Things*, he would have said, *but not immutably, but for a certain Time*. And then this Distinction would have run thus; *Some things are by the Law of Nature, but not immutably, but for a certain time*. This must needs be the naked Sense of his Distinction, as appears by his Explication in the Words following, where he saith, that *the Common Use of Things was natural so long as dominion was not brought in*: Dominion he saith was brought in by the will of man, whom by this Doctrine Grotius makes to be able to change that Law which God himself cannot change, as he saith. He gives a double ability to man; first, to make that no Law of Nature, which God made to be the Law of Nature: And next, to make that a Law of Nature which God made not; for now that Dominion is brought in, he maintains, it is against the Law of Nature to take that which is in another mans dominion.

Besides, I find no Coherence in these words, *By the Law of Nature it was right for every man to take his own by force, before Laws made*, since by the Law of Nature no man had any thing of his own; and until Laws were made, there was no Propriety, according to his Doctrine.

Jus Humanum voluntarium latius patens, he makes to be the Law of Nations, which (saith he) by the Will of All, or Many Nations, hath received a power to bind, he adds, *of Many, because*

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there is, as he grants, scarce any Law to be found common to all Nations, besides the Law of Nature; which also is wont to be called the Law of Nations, being common to all Nations. Nay, as he confesseth often, that is the Law in one part of the World, which in another part of the World is not the Law of Nations.

By these Sentences, it seems *Grotius* can scarce tell what to make to be the Law of Nations, or where to find it.

Whereas he makes the Law of Nations to have a binding Power from the Will of men, it must be remembred, that it is not sufficient for men to have a Will to bind, but it is necessary also to have a Power to bind: Though several Nations have one and the same Law.

For instance, Let it be granted that Theft is punished by Death in many Countreys, yet this doth not make it to be a Law of Nations, because each Nation hath it but as a Natural, or Civil Law of their own Countrey; and though it have a binding Power from the Will of many Nations, yet because each Nation hath but a Will and Power to bind themselves, and may without prejudice consent, or, consulting of any Neighbour-Nation, Alter this Law, if they find Cause, it cannot properly be called *the Law of Nations*. That which is the foundation of the Law of Nations, is, to have it concern *such things as belong to the mutual Society of*
Lib.4.c.8. Nations among themselves, as *Grotius* confesseth; and not of such things as have no further relation than to the particular Benefit of each Kingdom: For, as private men must neglect
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their own Profit for the Good of their Countrey ; so particular Nations must sometimes remit part of their Benefit, for the Good of many Nations.

True it is, that in particular Kingdomes and Common-wealths there be Civil and National Laws, and also Customs that obtain the Force of Laws : But yet such Laws are ordained by some supreme Power, and the Customs are examined judged and allowed by the same supreme Power. Where there is no Supreme Power that extends over all or many Nations but only God himself, there can be no Laws made to bind Nations, but such as are made by God himself: we cannot find that God made any Laws to bind Nations, but only the Moral Law ; as for the Judicial Law, though it were ordained by God, yet it was not the Law of Nations, but of one Nation only, and fitted to that Commonwealth.

If any think that the Customs wherein many Nations do consent, may be called the Law of Nations, as well as the Customs of any one Nation may be esteemed for national Laws : They are to consider that it is not the being of a Custom that makes it lawful, for then all Customs, even evil Customs, would be lawful ; but it is the Approbation of the supreme Power that gives a Legality to the Custom : where there is no Supreme Power over many Nations, their Customs cannot be made legal.

The Doctrine of *Grotius* is, that God immediately after the Creation did bestow

upon Mankind in general a Right over things of inferiour Nature — From whence it came to pass, that presently every man might snatch what he would for his own Use, and spend what he could, and such an Universal Right was then in stead of Property; for what every one so snatched, another could not take from him but by Injury.

How repugnant this Assertion of Grotius is to the Truth of Holy Scripture, Mr. Selden teacheth us in his *Mare Clausum*, saying, that Adam by Donation from God, Gen. 1.28. was made the general Lord of all things, not without such a private Dominion to himself, as (without his Grant) did exclude his Children: and by Donation and Assignment, or some kind of Cession (before he was dead, or left any Heir to succeed him) his Children had their distinct Territories by Right of private Dominion: Abel had his Flocks, and Pastures for them; Cain had his Fields for Corn, and the Land of Nod where he built himself a City.

This Determination of Mr. Selden's being consonant to the History of the Bible, and to natural Reason, doth contradict the Doctrine of Grotius: I cannot conceive why Mr. Selden should afterwards affirm, that neither the Law of Nature, nor the Divine Law, do command or forbid either Communion of all things or private Dominion, but permit both.

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As for the general Community between *Noah* and his Sons, which *Mr. Selden* will have to be granted to them, *Gen. 9. 2.* the Text doth not warrant it; for although the Sons are there mentioned with *Noah* in the Blessing, yet it may best be understood with a Subordination or a Benediction in Succession, the Blessing might truly be fulfilled, if the Sons either under, or after their Father enjoyed a Private Dominion: it is not probable that the private Dominion which God gave to *Adam*, and by his Donation, Assignment or Cession to his Children was abrogated, and a Community of all things instituted between *Noah* and his Sons, at the time of the Flood: *Noah* was left the sole heir of the World, why should it be thought that God would dis-inherit him of his Birth-right, and make him of all the men in the World, the only Tenant in Common with his Children? If the Blessing given to *Adam*, *Gen. 1. 28.* be compared to that given to *Noah* and his Sons, *Gen. 9. 2.* there will be found a considerable Difference between those two Texts: In the Benediction of *Adam*, we find expressed a *subduing of the Earth, and a Dominion over the Creatures*, neither of which are expressed in the Blessing of *Noah* nor the Earth there once named, it is only said, *The Fear of you shall be upon the Creatures, and into your hands are they delivered*; then immediately it follows, *Every moving thing shall be meat for you, as the green Herb*: The first Blessing gave *Adam* Dominion over the Earth and all Creatures, the latter allows *Noah* Liberty to use the living Creatures for Food: here is no Alteration or dimi-

nishing of his Title to a Propriety of all things but an Enlargement onely of his Commons.

But, whether, with *Grotius*, Community came in at the Creation, or, with *Mr. Selden*, at the Flood, they both agree it did not long continue; *Sed veri non est simile hujusmodi communionem diu obtinuisse*, is the confession of *Mr. Selden*. It seems strange that *Grotius* should maintain, that Community of all things should be by the Law of Nature, of which God is the Author; and yet such Community should not be able to continue: Doth it not derogate from the Providence of God Almighty, to ordain a Community which could not continue? or doth it make the Act of our Fore-fathers, in Abrogating the natural Law of Community, by introducing that of Propriety, to be a Sin of a high presumption?

The prime Duties of the Second Table are conversant about the Right of Propriety: but if Propriety be brought in by a Humane Law (as *Grotius* teacheth) then the Moral Law depends upon the Will of man. There could be no Law against Adultery or Theft, if Women and all things were common.

Mr. Selden saith, that the Law of Nature, or of God, *nec vetuit, nec jubeat, sed permisit utrumque, tam nempe rerum communionem quam privatum Dominium*. And yet for Propriety (which he terms *primæva rerum Dominia*) he teacheth, that *Adam* received it from God, à Numine acceperat: And for Community, he saith, *We meet with evident footsteps of the Community of things in that donation of God, by which Noah and his three Sons are made Domini*

Domini pro indiviso rerum omnium. Thus he makes the private Dominion of *Adam*, as well as the common Dominion of *Noah* and his Sons, to be both by the Will of God. Nor doth he shew how *Noah*, or his Sons, or their Posterity, had any Authority to alter the Law of Community which was given them by God.

In distributing Territories (Mr. Selden saith) the Consent, as it were, of Mankind (passing their promise, which should also bind their Posterity) did intervene, so that men departed from their common Right of Communion of those things which were so distributed to particular Lords or Masters. This Distribution by Consent of Mankind, we must take upon Credit; for there is not the least proof offered for it out of Antiquity.

How the Consent of Mankind could bind Posterity when all things were common, is a Point not so evident: where Children take nothing by Gift or by Descent from their Parents, but have an equal and common Interest with them, there is no reason in such cases, that the Acts of the Fathers should bind the Sons.

I find no Cause why *Mr. Selden* should call Community a *pristine Right*; since he makes it but to begin in *Noah*, and to end in *Noah's* Children, or Grand-children at the most; for he confesseth the Earth, à *Noachidis seculis aliquot post diluvium esse divisam.*

That ancient Tradition, which by *Mr. Selden* acknowledgment hath obtained Reputation every where, seems most reasonable, in that it tells us, that *Noah himself, as Lord of all, was Author of the distribution of the World,*

World, and of private Dominion, and that by the appointment of an Oracle from God, he did confirm this Distribution by his last Will and Testament, which at his Death he left in the hands of his eldest Son Sem, and also warned all his Sons, that none of them should invade any of their Brothers Dominions, or injure one another, because from thence Discord and Civil War would necessarily follow.

Many conclusions in Grotius his Book *de Jure Belli & Pacis*, are built upon the foundation of these two Principles.

1. The first is, That *Communis rerum usus naturalis fuit.*

2. The second is, that *Dominium quale nunc in usu est, voluntas humana introduxit.*

Upon these two Propositions of natural Community and voluntary Propriety, depend divers Dangerous and Seditious conclusions, which are dispersed in several places. In the fourth Chapter of the first Book, the Title of which Chapter is, *Of the War of Subjects against Superiours*; Grotius handleth the Question, *Whether the Law of not resisting Superiours, do bind us in most grievous and most certain danger?* And his Determination is, that *this Law of not resisting Superiours, seems to depend upon the Will of those men who at first joyned themselves in a Civil Society, from whom the Right of Government doth come to them that govern; if those had been at first asked, if their Will were to impose this burthen upon all, that they should choose rather to dye, than in any case by Arms to repell the force of Superiours; I know not whether they would answer, that it was their Will, unless perhaps with this*

this addition, if Resistance cannot be made but with the great disturbance of the Commonwealth, and destruction of many Innocents. Here we have his Resolution, that in great and certain danger, men may resist their Governours, if it may be without disturbance of the Commonwealth: if you would know who should be Judge of the greatness and certainty of the Danger, or how we may know it, Grotius hath not one word of it, so that for ought appears to the contrary, his Mind may be that every private man may be Judge of the Danger, for other Judge he appoints none; it had been a foul Fault in so desperate a Piece of Service, as the resisting of Superiors, to have concealed the lawful Means, by which we may judge of the Greatness or Certainty of publick Danger, before we lift up our hands against Authority, considering how prone most of us are, to censure and mistake those things for great and certain Dangers, which in Truth many Times are no dangers at all, or at the most but very small ones; and so flatter our selves, that by resisting our Superiours we may do our Country laudible Service, without Disturbance of the Commonwealth, since the Effects of Sedition cannot be certainly judged of but by the Events only.

Grotius proceeds to answer an Objection against this Doctrine of resisting Superiors. If (saith he) any man shall say that this rigid Doctrine of dying, rather then resisting any Injuries of Superiours, is no humane, but a divine Law: It is to be noted, that men at first, not by any Precept of God, but of their own Accord, led by Experience of the Infirmities of
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separated Families against Violence, did meet together in Civil Society, from whence Civil Power took beginning, which therefore St. Peter calls an humane Ordinance, although elsewhere it be called a divine Ordinance, because God approveth the wholesome Institutions of men; God in Approving a humane Law is to be thought to approve it as humane, and in a humane Manner.

And again in another place he goeth further, and teacheth us, that if the Question happen to be concerning the Primitive Will of the People, it will not be amiss for the People that now are, and which are accounted the same with them that were long ago, to express their Meaning, in this matter, which is to be followed, unless it certainly appear, that the People long ago willed otherwise. lib. 2. c. 2.

For fuller Explication of his Judgment about resisting Superiours, he concludes thus: *The greater the thing is which is to be preserved, the greater is the Equity which reacheth forth an Exception against the words of the Law: yet I dare not (saith Grotius) without Difference condemn either simple men or a lesser part of the People, who in the last Refuge of Necessity, do so use this Equity, as that in the mean time, they do not forsake the Respect of the common Good.*

Another Doctrine of Grotius is, that the Empire which is exercised by Kings, doth not cease to be the Empire of the People; that Kings who in a lawful Order succeed those who were elected, have the supreme Power by an usufructuary Right only, and no Propriety.

Furthermore he teacheth, that the People may choose what Form of Government they please, and their Will

Will is the Rule of Right. Populus eligere potest qualem vult gubernationis formam, neque ex præstantia formæ, sed ex voluntate jus metiendum est. *lib. I. c. 3.*

Also, that the People choosing a King may reserve some Acts to themselves, and may bestow others upon the King, with full Authority, if either an express Partition be appointed, or if the People being yet free do command their future King, by way of a standing Command, or if any thing be added by which it may be understood, that the King may be compelled or else punished.

In these Passages of Grotius which I have cited, we find evidently these Doctrines.

1. That Civil Power depends on the Will of the People.

2. That private men or petty Multitudes may take up Arms against their Princes.

3. That the lawfullest Kings have no Propriety in their Kingdoms, but an usufructuary Right only: as if the People were the Lords, and Kings but their Tenants.

4. That the Law of Not resisting Superiours, is a humane Law, depending on the Will of the People at first.

5. That the Will of the first People, if it be not known, may be expounded by the People that now are.

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No Doubt but *Grotius* foresaw what Uses the People might make of these Doctrines, by concluding, if the chief Power be in the People, that then it is lawful for them to compel and punish Kings as oft as they misuse their Power: Therefore he tells us, he rejects the Opinion of them, who every where and without Exception will have the chief Power to be so the Peoples, that it is lawful for them to compel and punish Kings as oft as they misuse their Power; and this Opinion he confesseth if it be altogether received, hath been and may be the Cause of many Evils. This cautelous Rejection qualified with these Terms of every where without Exception, and altogether, makes but a mixt Negation, partly negative, and partly affirmative (which our Lawyers call a negative Repugnant) which brings forth this modal Proposition, that in some Places with Exception, and in some sort the People may compel and punish their Kings.

But let us see how *Grotius* doth refute the general Opinion, that People may correct Kings. He frames his Argument in these words, It is lawful for every man to yield himself to be a private Servant to whom he please. What should hinder, but that also it may be lawful for a free People so to yield themselves to one or more, that the Right of governing them be fully set over without retaining any part of the Right? and you must not say, That this may not be presumed, for we do not now seek, what in a doubtful case may be presumed, but what by Right may be done. Thus far is the Argument, in which the most that is proved (if we gratifie him, and yield his whole Argument for good) is this, that
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the People may grant away their Power without retaining any part. But what is this to what the People have done? for though the People may give away their Power without Reservation of any part to themselves; yet if they have not so done, but have reserved a part, *Grotius* must confess, that the People may compel and punish their Kings if they transgress: so that by his Favour, the Point will be, not what by Right may be done, but what in this doubtful case hath been done, since by his own Rule *it is the Will and Meaning of the first People that joyned in Society*, that must regulate the Power of their Successours.

But on *Grotius* side it may be urged, that in all Presumption the People have given away their whole Power to Kings, unless they can prove they have reserved a part; for if they will have any Benefit of a Reservation or Exception, it lies on their part to prove their Exception, and not on the Kings Part who are in Possession.

This Answer, though in it self it be most just and good; yet of all men *Grotius* may not use it. For he saves the People the Labour of proving the primitive Reservation of their Forefathers, by making the People that now are competent Expolitors of the meaning of those first Ancestors, who may justly be presumed, not to have been either so improvident for themselves, or so negligent of all their Posterity, when by the Law of Nature they were free and had all things common, at an Instant with any Condition or Limitation to give away that Liberty and Right of Community, and

and to make themselves and their Children eternally subject to the Will of such Governours as might misuse them without Controul.

On the behalf of the People, it may be further answered to *Grotius*, that although our Ancestors had made an absolute Grant of their Liberty, without any Condition expressed, yet it must be necessarily implied, that it was upon condition to be well-governed, and that the Non-performance of that implied Condition, makes the Grant void ; Or, if we will not allow an implicit Condition, then it may be said, that the Grant in it self was a void Grant, for being unreasonable, and a violation of the Law of Nature, without any valuable Consideration. What sound Reply *Grotius* can return to such Answers, I cannot conceive, if he keep himself to his first Principle of natural Community. As *Grotius's* Argument against the People is not sound, so his Answer to the Argument that is made for the People, is not satisfactory. It is objected, that *he that ordains, is above him that is ordained*. *Grotius* answers, *Verum duntaxat est in ea constitutione cujus effectus perpetuo pendet à voluntate constituentis, non etiam in ea quæ ab initio est voluntatis, postea verò effectum habet necessitatis, quomodo mulier virum sibi constituit, cui parere semper habet necesse*. The Reply may be, that by *Grotius's* former Doctrine the very Effect of the Constitution of Kings by the People, depends perpetually upon the Will of them, that Constitute, and upon no other Necessity : he will not say, that it is by any necessity of the Law of Nature, or by any positive Law of God ; he teach-

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eth, that *non Dei præcepto, sed sponte*, men entred into Civil Society, that it is an Humane Ordinance, that God doth onely approve it *ut humanum, and humano modo*. He tells us further, that *Populus potest eligere qualem vult gubernationis formam, & ex voluntate jus metiendum est*; that the People may give the King as little Power as they will, and for as little time as they please, that they may make temporary Kings, as Dictators and Protectors: *jus quovis tempore revocabile, id est precarium*; as the Vandals in Africa, and the Goths in Spain, would depose their Kings as oft as they displeased them, *horum enim actus irriti possunt reddi ab his qui potestatem revocabiliter dederunt, ac proinde non idem est effectus nec jus idem*. Here he doth teach in plain words, the Effect doth depend upon the Will of the People. By this we may judge how improperly he useth the instance of a Woman, that appoints her self a Husband, whom she must alwayes necessarily obey, since the necessity of the Wives obedience depends upon the Law of God, which hath made the Bond of Matrimony indissolvable. Grotius will not say the like for the continuance of the Subjects obedience to the Prince, neither will he say that Women may choose Husbands, as he tells us the People may choose Kings, by giving their Husbands as little Power, and for as little a Time as they please.

Next, it is objected, that *Tutors who are set over Pupils may be removed, if they abuse their Power*. Grotius answers, *In tutore hoc procedit qui superiorem habet, at in imperiis quia progressus non datur in infi-*

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nitum, omnino in aliqua persona aut cætu consistendum est : We must stay in some one Person, or in a Multitude, whose faults (because they have no superiour Judge above them) God hath witnessed that he will have a particular care of, either to revenge them, if he judge it needful, or to tolerate them, either for Punishment, or Tryal of the People. It is true, in Kingdomes we cannot proceed in infinitum, yet we may, and must go to the highest, which by Grotius his Rule is the People, because they first made Kings, so that there is no need to stay in aliqua persona, but in cætu, in the People, so that by his Doctrine Kings may be punished by the People, but the faults of the People must be left to the Judgment of God.

I have briefly presented here the desperate Inconveniences which attend upon the Doctrine of the natural freedom and community of all things ; these and many more Absurdities are easily removed, if on the contrary we maintain the natural and private Dominion of Adam, to be the fountain of all Government and Propriety : And if we mark it well, we shall find that Grotius doth in part grant as much ; The ground why those that now live do obey their Governours, is the Will of their Fore-fathers, who at the first ordained Princes, and, in obedience to that Will, the Children continue in subjection ; this is according to the mind of Grotius : so that the Question is not *Whether Kings have a fatherly Power over their Subjects, but how Kings came first by it.* Grotius will have it, that our Fore-fathers being all free, made an Assignment of their Power to Kings ; the other
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opinion denies any such general freedom of our Fore-fathers, but derives the Power of Kings from the Original Dominion of *Adam*.

This natural Dominion of *Adam* may be proved out of *Grotius* himself, who teacheth, that *generatione jus acquiritur Parentibus in Liberos*, and that naturally no other can be found, but the Parents to whom the Government should belong, and the Right of Ruling and Compelling them doth belong to Parents; And in another place he hath these words, speaking of the first Commandment, *Parentum nomine, qui naturales sunt Magistratus, etiam alios Rectores par est intelligi, quorum autoritas Societatem humanam continet*: and if Parents be natural Magistrates, Children must needs be born natural Subjects.

But although *Grotius* acknowledge Parents to be natural Magistrates, yet he will have it, that Children, when they come to full age, and are separated from their Parents, are free from natural Subjection. For this he offers proof out of *Aristotle*, and out of Scripture. First, for *Aristotle*; we must note, he doth not teach, that every separation of Children of full age, is an Obtaining of liberty, as if that men when they come to years, might voluntarily separate themselves, and cast off their natural Obedience; but *Aristotle* speaks onely of a passive Separation; for he doth not say that Children are subject to Parents until they do separate, but he saith, until they be separated, *χωρεσθῆναι*, in the Verb of the Passive Voice. That is, until by Law they be separated: for the Law (which is nothing else but the Will of him that hath

the Power of the Supreme Father) doth in many cases, for the publick Benefit of Society, free Children from subjection to the Subordinate Parent, so that the natural Subjection by such Emancipation of Children, is not extinguished, but onely assumed and regulated by the Parent paramount.

Secondly, *Grotius* cites *Numb. 30.* to prove that *the Power of the Fathers over the Sons and Daughters, to dissolve their Vows, was not perpetual, but during the time only whilst the Children were part of the Fathers Family.* But if we turn to the Chapter, we may find that *Grotius* either deceives himself, or us; for there is not one word in that Chapter concerning the Vows of Sons, but of Daughters only, being in their Father's Family; and the Being of the Daughter in the Father's House, meaneth only the Daughter's being a Virgin, and not married, which may be gathered by the Argument of the whole Chapter, which taketh particular order for the Vows of Women of all Estates. First, for Virgins, in the third verse. Secondly, for Wives in general, in the sixth verse. Thirdly, for Widows, and Women divorced, in the ninth verse. There is no Law for Virgins out of their Father's houses; we may not think they would have been omitted, if they had been free from their Fathers; we find no freedom in the Text for Women, till after Marriage: And if they were married, though they were in their Father's houses, yet the Fathers had no power of their Vows, but their Husbands.

If, by the Law of Nature, departure from the Fathers house had emancipated Children, why doth the Civil Law, contrary to the Law of Nature,

ture, give Power and Remedy to Fathers for to recover by Action of Law their Children that depart, or are taken away from them without their Consent? Without the Consent of Parents the Civil Law allows no emancipation.

Concerning Subjection of Children to Parents, *Grotius* distinguisheth three several times.

The first is the time of *Imperfect Judgment*.

The second is the time of *Perfect Judgment*: but whilst the Son remains part of the Father's Family.

The third is, the time after he hath departed out of his Father's Family.

In the first time he saith, *All the actions of Children are under the dominion of the Parents.*

During the second time, when they are of the age of mature Judgment, they are under their Father's Command in those actions onely, which are of moment for their Parents Family. In other actions the Children have a Power or moral Faculty of doing, but they are bound in those also to study alwayes to please their Parents. But since this Duty is not by force of any moral Faculty, as those former are, but onely of Piety, Observance, and Duty of repaying Thanks; it doth not make any thing void which is done against it, as neither a gift of any thing is void, being made by any Owner whatsoever, against the rules of Parsimony.

In both these times, the Right of Ruling and Compelling is (as *Grotius* acknowledgeth) comprehended so far forth as Children are to be compelled to their Duty, or amended; although the Power of a Parent doth so follow the person of a Father, that it cannot be

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pulled away, and transferred upon another, yet the Father may naturally pawn, or also sell his Son, if there be need.

In the third time he saith, *the Son is in all things Free, and of his own Authority : always that Duty remaining of Piety and Observance, the cause of which is perpetual.* In this triple distinction, though Grotius allow Children in some cases during the second, and in all cases during the third time to be free, and of their own Power, by a moral Faculty : yet, in that he confesseth, *in all cases Children are bound to study always to please their Parents out of Piety and Duty, the cause of which, as he saith, is perpetual :* I cannot conceive, how in any case Children can naturally have any Power or moral Faculty of doing what they please without their Parents leave, since they are alwayes bound to study to please their Parents. And though by the Laws of some Nations, Children, when they attain to years of Discretion, have Power and Liberty in many actions ; yet this Liberty is granted them by Positive and Humane Laws onely, which are made by the Supreme Fatherly Power of Princes, who Regulate, Limit, or Assume the Authority of inferiour Fathers, for the publick Benefit of the Commonwealth : so that naturally the Power of Parents over their Children never ceaseth by any Separation; but only by the Permission of the transcendent Fatherly power of the Supreme Prince, Children may be dispensed with, or privileged in some cases, from obedience to subordinate Parents.

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Touching the Point of dissolving the Vows of Children, *Grotius* in his last Edition of his Book hath corrected his first: for in the first he teacheth, that *the Power of the Father was greater over the Daughter dwelling with him, than over the Son; for her Vow he might make void, but not his*: But instead of these words, in his last Edition, he saith, that *the Power over the Son or Daughter to dissolve Vows, was not perpetual, but did indure as long as the Children were a part of their Fathers Family*. About the meaning of the Text out of which he draws this Conclusion, I have already spoken.

Three wayes *Grotius* propoundeth, whereby *Supreme Power* may be had.

First, By full Right of Propriety.

Secondly, By an *Usufructuary Right*:

Thirdly, By a Temporary Right.

The Roman Dictators, saith he, had *Supreme Power by a Temporary Right*; as well those Kings who are first Elected, as those that in a lawful Right succeed to Kings elected, have *Supreme Power by an usufructuary Right*: some Kings that have got *Supreme Power by a just War*, or into whose Power some People, for avoiding a greater Evil, have so yielded themselves, as that they have excepted nothing, have a full Right of Propriety.

Thus we find but two means acknowledged by *Grotius*, whereby a King may obtain a full Right of Propriety in a Kingdome: That is, either by a just War, or by Donation of the People.

How a War can be just without a precedent Title in the Conquerour, *Grotius* doth not shew; and if the Title onely make the War just, then no

other Right can be obtained by War, than what the Title bringeth; for a just War doth onely put the Conquerour in possession of his old Right, but not create a New. The like which *Grotius* saith of Succession, may be said of War. *Succession* (saith he) is no Title of a Kingdome, which gives a Form to the Kingdom, but a Continuation of the Old; for the Right which began by the Election of the Family, is continued by Succession; wherefore, so much as the first Election gave, so much the Succession brings. So to a Conquerour that hath a Title, War doth not give, but put him in possession of a Right: and except the Conquerour had a full Right of Propriety at first, his Conquest cannot give it him: for if originally he and his Ancestors had but an usufructuary Right, and were outed of the possession of the Kingdom by an Usurper: here, though the Re-conquest be a most just War, yet shall not the Conquerour in this case gain any full Right of Propriety, but must be remitted to his usufructuary Right onely: for what Justice can it be, that the Injustice of a third Person, an Usurper, should prejudice the People, to the devesting of them of that Right of Propriety, which was reserved in their first Donation to their Elected King, to whom they gave but an usufructuary Right, as *Grotius* conceiveth? Wherefore it seems impossible, that there can be a just War, whereby a full Right of Propriety may be gained, according to *Grotius's* Principles. For if a King come in by Conquest, he must either conquer them that have a Governour, or those People that have none: if they have no Governour, then they are a free
Peo-

People, and so the War will be unjust to conquer those that are Free, especially if the Freedom of the People be by the primary Law of Nature, as *Grotius* teacheth: But if the People conquered have a Governour, that Governour hath either a Title or not; If he have a Title, it is an unjust War that takes the Kingdom from him: If he have no Title, but only the Possession of a Kingdom, yet it is unjust for any other man, that wants a Title also, to conquer him that is but in possession; for it is a just Rule, that where *the Cases are alike, he that is in Possession is in the better condition; In pari causa possidentis melior conditio.* Lib. 2. c. 23. And this by the Law of Nature, even in the judgment of *Grotius*. But if it be admitted, that he that attempts to conquer have a Title, and he that is in possession hath none: here the Conquest is but in nature of a possessory Action, to put the Conquerour in possession of a primer Right, and not to raise a new Title; for War begins where the Law fails: *Ubi Judicia deficiunt incipit Bellum.* Lib. 2. c. 1. And thus, upon the matter, I cannot find in *Grotius's* Book *de Jure Belli*, how that any Case can be put wherein by a just War a man may become a King, pleno Jure Proprietatis.

All Government and Supreme Power is founded upon publick Subjection, which is thus defined by *Grotius*. *Publica Subjectio est, qua se Populus homini alicui, aut pluribus hominibus, aut etiam populo alteri in ditionem dat.* Lib. 2. c. 5. If Subjection be the Gift of the People, how can Supreme Power, pleno Jure, in full Right, be got by a just War?

As

As to the other means whereby Kings may get Supreme Power in full Right of Propriety, *Grotius* will have it to be, *when some People, for avoiding a greater Evil, do so yield themselves into anothers Power, as that they do except nothing.* It would be considered how, without War, any People can be brought into such danger of Life, as that because they can find no other wayes to defend themselves, or because they are so pressed with Poverty, as they cannot otherwise have means to sustain themselves, they are forced to renounce all Right of Governing themselves, and deliver it to a King.

But if such a Case cannot happen, but by a War onely, which reduceth a People to such terms of Extremity, as compells them to an absolute Abrenuntiation of all Sovereignty: then War, which causeth that necessity, is the prime means of extorting such Sovereignty, and not the free Gift of the People, who cannot otherwise choose but give away that Power which they cannot keep.

Thus, upon the Reckoning, the two ways propounded by *Grotius*, are but one way; and that one way, in conclusion, is no way whereby Supreme Power may be had in full Right of Propriety. His two ways are, a *Just War*, or a *Donation of the People*; a just War cannot be without a Title, no Title without the Donation of the People, no Donation without such a Necessity as nothing can bring upon the Donors but a War. So that howsoever *Grotius* in words acknowledges that Kings may have a full Right of Propriety, yet by consequence he denies it, by such circular Suppositions, as by coincidence destroy each other, and in effect

effect he leaves all People a Right to plead in Bar against the Right of Propriety of any Prince, either *per minas*, or *per dures*.

Many times, saith *Grotius*, it happens, that War is grounded upon *Expletive Justice*, *Justitiam Expleticem*, which is, when a man cannot obtain what he ought, he takes that which is as much in value, which in moral Estimation is the same. For in War, when the same Province cannot be recovered, to the which a man hath a Title, he recovers another of the like value. This recovery cannot give a full right of Propriety : because the Justice of such a War reacheth no farther than to a compensation for a former Right to another thing, and therefore can give no new Right.

I am bound to take notice of a Case put by *Grotius*, amongst those Causes which he thinks should move the People to renounce all their Right of Governing, and give it to another. It may also happen (saith he) that a Father of a Family possessing large Territories, will not receive any man to dwell within his Land upon any other condition. And in another place, he saith, that all Kings are not made by the People, which may be sufficiently understood by the Examples of a Father of a Family receiving Strangers under the Law of Obedience. In both these Passages we have a close and curt acknowledgment, that a Father of a Family may be an absolute King over Strangers, without Choice of the People ; now I would know whether such Fathers of Families have not the same absolute Power over their own Children, without the Peoples Choice, which he allows them over Strangers :
it

if they have, I cannot but call them Absolute proprietary Kings, though *Grotius* be not willing to give them that Title in plain terms : for indeed to allow such Kings, were to condemn his own Principle, that *Dominion came in by the Will of the People* ; and so consequently to overthrow his *Usufructuary Kings*, of whom I am next to speak.

Grotius saith, that the Law of Obeying, or Resisting Princes, depends upon the Will of them who first met in Civil Society, from whom Power doth flow to Kings : And, that men of their own accord came together into Civil Society, from whence springs Civil Power, and the People may choose what Form of Government they please. Upon these Suppositions, he concludes, that Kings, elected by the People, have but an *Usufructuary Right*, that is, a Right to take the Profit or Fruit of the Kingdom, but not a Right of Propriety or Power to alienate it. But why doth he call it an *Usufructuary Right* ? It seems to me a term too mean or base to express the Right of any King, and is derogatory to the Dignity of Supreme Majesty. The word *Usufructuary* is used by the Lawyers, to signifie him that hath the Use, Profit or Fruit of some Corporal thing, that may be used without the Property; for of *fungible things* (*res fungibiles*, the *Civilians* call them) that are spent or consumed in the Use, as Corn, Wine, Oyl, Money, there cannot be an *Usufructuary Right*.

It is to make a Kingdom all one with a Farm, as if it had no other Use but to be let out to him that can make most of it : whereas, in truth, it is the

the Part and Duty of a King to govern, and he hath a Right so to do, and to that End Supreme Power is given unto him ; the taking of the Profit, or making Use of the Patrimony of the Crown, is but as a means onely to enable him to perform that great work of Government.

Besides, *Grotius* will not onely have an elected King, but also his lawful Successors, to have but an *Usufructuary Right*, so that though a King hath a Crown to him and to his Heirs, yet he will allow him no Propriety, because he hath no Power to alienate it ; for he supposeth the primary Will of the People to have been to bestow Supreme Power to go in Succession, and not to be alienable ; but for this he hath no better proof than a naked presumption : *In Regnis quæ Populi voluntate delata sunt concedo non esse præsumendum eam fuisse Populi voluntatem, ut alienatio Imperii sui Regi permitteretur.*

But though he will not allow Kings a Right of Propriety in their Kingdoms, yet a Right of Propriety there must be in some body, and in whom but in the People ? for he saith, *the Empire which is exercised by Kings, doth not cease to be the Empire of the People.* His meaning is, the Use is the King's, but the Property is the Peoples.

But if the Power to alienate the Kingdom be in him that hath the Property, this may prove a comfortable Doctrine to the People : but yet to allow a Right of Succession in Kings, and still to reserve a Right of Property in the People, may make some contradiction : for the Succession must either hinder the Right of Alienation which is in the
People,

People, or the Alienation must destroy that Right of Succession, which, by *Grotius's* confession, may attend upon elected Kings.

Though *Grotius* confess, that Supreme Power be *Unum quiddam, and in it self indivisible*, yet he saith, *Sometimes it may be divided either by parts potential, or subjunctive*. I take his meaning to be, that the Government or the Governed may be divided: an Example he gives of the *Roman Empire*, which was divided, into the *East and West*: but whereas he saith, *fieri potest, &c. It may be, the People choosing a King, may reserve some Actions to themselves, and in others they may give full power to the King*: The Example he brings out of *Plato* of the *Heraclides* doth not prove it, and it is to dream of such a Form of Government as never yet had name, nor was ever found in any settled Kingdom, nor cannot possibly be without strange Confusion.

If it were a thing so voluntary, and at the pleasure of men, when they were free, to put themselves under Subjection, why may they not as voluntarily leave Subjection when they please, and be free again? If they had a liberty to change their Natural Freedom, into a voluntary Subjection, there is stronger reason that they may change their voluntary Subjection into natural Freedom, since it is as lawful for men to alter their Wills as their Judgments.

Certainly, it was a rare felicity, that all the men in the World at one instant of time should agree together in one mind, to change the Natural Community of all things into Private Dominion:
for

for without such an unanimous Consent, it was not possible for Community to be altered : for, if but one man in the World had dissented, the Alteration had been unjust, because that Man by the Law of Nature had a Right to the common Use of all things in the World ; so that to have given a Propriety of any one thing to any other, had been to have robbed him of his Right to the common Use of all things. And of this Judgment the Jesuit *Lud. Molina* seems to be, in his Book *De Justitia*, where he saith, *Si aliquis de cohabitantibus, &c.* If one of the Neighbours will not give his Consent to it, the Commonwealth should have no Authority over him, because then every other man hath no Right or Authority over him, and therefore can they not give Authority to the Commonwealth over him.

If our first Parents, or some other of our Forefathers did voluntarily bring in Propriety of Goods, and Subjection to Governours, and it were in their power either to bring them in or not, or having brought them in, to alter their minds, and restore them to their first condition of Community and Liberty ; what reason can there be alleged that men that now live should not have the same power ? So that if any one man in the World, be he never so mean or base, will but alter his Will, and say, he will resume his Natural Right to Community, and be restored unto his Natural Liberty, and consequently take what he please, and do what he list ; who can say that such a man doth more than by Right he may ? And then it will be lawful for every man, when he please,
to

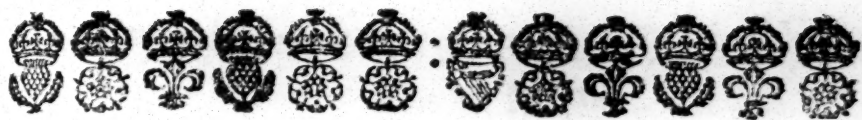
72 *Observations upon H. Grotius &c.*

to dissolve all Government, and Destroy all Property.

Whereas Grotius saith, *That by the Law of Nature all things were at first Common*; and yet teacheth, that *after Propriety was brought in, it was against the Law of Nature to use Community*; He doth thereby not onely make the Law of Nature changeable, which he saith God cannot do, but he also makes the Law of Nature contrary to it self.

OBSE-

THE
ANARCHY
OF
A Limited or Mixed
MONARCHY.



THE
PREFACE.

W^E do but flatter our selves,
if we hope ever to be go-
vern'd without an Arbi-
trary Power. No : we mi-
stake, the Question is not, Whether there
shall be an Arbitrary Power ; but the only
point is, Who shall have that Arbitrary
Power, whether one man or many ? There
never was, nor ever can be any People go-
vern'd without a Power of making Laws,
and every Power of making Laws must be
Arbitrary : For to make a Law according
to Law, is Contradictio in adjecto. It is
generally confessed, that in a Democracy
the Supreme or Arbitrary Power of making
Laws is in a multitude ; and so in an A-
ristocracy the like Legislative or Arbitrary
Power is in a few, or in the Nobility. And
therefore by a necessary Consequence, in a
Monarchy the same Legislative Power must
be in one ; according to the Rule of Ari-
stotle,

The Preface.

Aristotle, who saith, Government is in One, or in a Few, or in Many.

This antient Doctrine of Government, in these latter days hath been strangely refined by the Romanists, and wonderfully improved since the Reformation, especially in point of Monarchy, by an Opinion, That the People have Originally a Power to create several sorts of Monarchy, to limit and compound them with other Forms of Government, at their pleasure.

As for this natural Power of the People, they finde neither Scripture, Reason, or Practice to justifie it: For though several Kingdoms have several and distinct Laws one from another; yet that doth not make several sorts of Monarchy: Nor doth the difference of obtaining the Supreme Power, whether by Conquest, Election, Succession, or by any other way, make different sorts of Government. It is the difference only of the Authors of the Laws, and not of the Laws themselves, that alters the Form of Government; that is, whether one man, or more than one, make the Laws.

*Since the growth of this new Doctrine, Of the Limitation and Mixture of Monarchy, it is most apparent, that Monarchy hath been crucified (as it were) between
two*

The Preface.

two Thieves, the Pope and the People ; for what Principles the Papists make use of for the Power of the Pope above Kings, the very same, by blotting out the word Pope, and putting in the word People, the Plebists take up to use against their Sovereigns.

If we would truly know what Popery is, we shall finde by the Laws and Statutes of the Realm, that the main, and indeed the only Point of Popery, is the alienating and withdrawing of Subjects from their Obedience to their Prince, to raise Sedition and Rebellion : If Popery and Popularity agree in this Point, the Kings of Christendome, that have shaken off the Power of the Pope, have made no great bargain of it, if in place of one Lord abroad, they get many Lords at home within their own Kingdoms.

I cannot but reverence that Form of Government which was allowed and made use of for God's own People, and for all other Nations. It were Impiety, to think that God, who was careful to appoint Judicial Laws for his chosen People, would not furnish them with the best Form of Government : or to imagine that the Rules given in divers places in the Gospel, by

The Preface.

our blessed Saviour and his Apostles, for Obedience to Kings, should now, like Almanacks out of date, be of no use to us; because it is pretended, We have a Form of Government now, not once thought of in those days. It is a shame and scandal for us Christians, to seek the Original of Government from the Inventions or Fictions of Poets, Orators, Philosophers, and Heathen Historians, who all lived thousands of Years after the Creation, and were (in a manner) ignorant of it: and to neglect the Scriptures, which have with more Authority most particularly given us the true Grounds and Principles of Government.

These Considerations caused me to scruple this Modern piece of Politicks, touching Limited and Mixed Monarchy: and finding no other that presented us with the nature and means of Limitation and Mixture, but an Anonymus Authour; I have drawn a few brief Observations upon the most considerable part of his Treatise, in which I desire to receive satisfaction from the Authour himself, if it may be, according to his promise in his Preface; or if not from him, from any other for him.

Philip Hunton

T H E



THE
ANARCHY
Of a Limited or Mixed
MONARCHY.



Here is scarce the meanest man of the multitude, but can now in these days tell us that the Government of the Kingdome of England is a LIMITED and MIXED Monarchy: And it is no marvail, since all the disputes and arguments of these distracted times both from the Pulpit and the Presse to tend and end in this Conclusion.

The Author of the Treatise of Monarchy hath copiously handled the nature and manner of *Limited* and *Mixed* Monarchy, and is the first and onely man (that I know) hath undertaken the task of describing it; others onely mention it, as taking it for granted.

Doctor Ferne gives the Author of this Treatise of Monarchy this testimony, that *the Mixture of Government is more accurately delivered and urged by this Treatise than by the Author* P.3.

of the *Fuller Answer*. And in another place Doctor *Ferne* saith, he allows his *distinction of Monarchy into Limited and Mixed*. P.13.

I have with some diligence looked over this Treatise, but cannot approve of these distinctions which he propounds; I submit the reasons of my dislike to others judgements. I am somewhat confident that his doctrine of *Limited and Mixed Monarchy* is an opinion but of yesterday, and of no antiquity, a meer innovation in policy, not so old as *New England*, though calculated properly for that Meridian. For in his first part of the Treatise which concerns Monarchy in General, there is not one proof, text, or example in Scripture that he hath produced to justify his conceit of *Limited and Mixed Monarchy*. Neither doth he afford us so much as one passage or reason out of *Aristotle*, whose books of *Politicks*, and whose natural reasons are of greatest authority and credit with all rational men, next to the sacred Scripture: Nay, I hope I may affirm, and be able to prove, that *Arist.* doth confute both *limited and mixed Monarchy*, howsoever Doctor *Ferne* P.6. think these new opinions to be raised upon *Arist.* principles. As for other Politicians or Historians, either divine or humane, ancient or modern, our Author brings not one to confirm his opinions; nor doth he, nor can he shew that ever any Nation or people were governed by a *limited or mixed Monarchy*.

Machivel is the first in Christendome that I can find that writ of a *Mixed Government*, but not one syllable of a *Mixed Monarchy*: he, in his discourses or disputations upon the Decades of *Livy*, falls so enamored

enamored with the Roman Common-wealth, that he thought he could never sufficiently grace that popular government, unless he said, there was something of Monarchy in it: yet he was never so impudent as to say, it was a *mixed* Monarchy. And what *Machivel* hath said for *Rome*, the like hath *Contarene* for *Venice*. But *Bodin* hath layed open the errors of both these, as also of *Polybius*, and some few others that held the like opinions. As for the Kingome of *England*, if it have found out a form of Government (as the Treatise layeth it down) of such perfection as never any people could; It is both a glory to the Nation, and also to this Author, who hath first decipher'd it.

I now make my approach to the Book it self: The title is, *A Treatise of Monarchy*. The first part of it is, of *Monarchy in General*: Where first, I charge the Author, that he hath not given us any definition or description of Monarchy in General: for by the rules of method he should have first defined, and then divided: for if there be several sorts of Monarchy, then in something they must agree, which makes them to be Monarchies; and in something they must disagree and differ, which makes them to be several sorts of Monarchies. In the first place he should have shewed us in what they all agreed, which must have been a definition of Monarchy in General, which is the foundation of the Treatise; and except that be agreed upon, we shall argue upon we know not what. I press not this main omission of our Author out of any humour of wrangling, but because I am confident that had he pitched upon any definition of Monarchy in
Gene-

General, his own definition would have confuted his whole Treatise: Besides, I find him pleased to give us a handsome definition of *Absolute Monarchy*, from whence I may infer, that he knew no other definition that would have fitted all his other sorts of Monarchy; it concerned him to have produced it, lest it might be thought there could be no Monarchy but Absolute.

What our Author hath omitted, I shall attempt to supply, and leave to the scanning. And it shall be a real as well as nominal definition of Monarchy. *A Monarchy is the Government of one alone.* For the better credit of this definition, though it be able to maintain it self, yet I shall deduce it from the principles of our Author of the Treatise of Monarchy.

We all know that this word *Monarch* is compounded of two Greek words, *Μόν* and *ἀρχήν*. *ἀρχήν* is *imperare*, to govern and rule; *μόν* signifies *one alone*. The understanding of these two words may be picked out of our Author. First, for Go-

P.1. government he teacheth us, it is *Potestatis exercitium*, the exercise of a moral power; next he grants us, that every *Monarch* (even his limited Monarch) must have the *Supream* power of the State

P.12. in him, so that his power must no way be limited by any power above his; for then he were not a *Monarch*, but a subordinate *Magistrate*. Here we have a fair confession of a supream unlimited power in his limited *Monarch*: if you will know what he means by these words *supream power*, turn to his 26 page, there you will finde, *Supream power is either Legislative, or Gubernative, and that the Legislative power is the chief of the two*; he makes both

both supream, and yet one chief: the like distinction he hath before, where he saith, *The power of Magistracy, in respect of its degrees, is* P.5. *Nomothetical or Architectional; and Gubernative or Executive: by these words of Legislative, Nomothetical, and Architectional power, in plain English, he understands a power of making Laws; and by Gubernative and Executive, a power of putting those Laws in execution, by judging and punishing offenders.*

The result we have from hence is, that by the Authors acknowledgment, every Monarch must have the supream power, and that supream power is, a power to make laws: and howsoever the Author makes the Gubernative and Executive power a part of the supream power; yet he confesseth *the Legislative to be chief, or the highest degree of power*, for he doth acknowledge degrees of supream power; nay, he afterwards teacheth us, that *the Legislative power is the height of power, to* P.40. *which the other parts are subsequent and subservient: if Gubernative be subservient to Legislative, how can Gubernative power be supream?*

Now let us examine the Authors *Limited Monarch* by these his own rules; he tells us, that in a *moderated, limited, stinted, condit-* P.12. *ionate, legal or allayed Monarchy*, (for all these terms he hath for it) *the supream power must be restrained by some Law according to which this power was given, and by direction of which this power must act; when in a line before he said, that the Monarchs power must not be limited by any power above his: yet here he will have his supream power restrained; not limited, and yet restrained: is not a restraint,*

a limitation? and if restrained, how is it supreme? and if restrained by some Law, is not the power of that Law, and of them that made that Law, above his supreme power? and if by the direction of such Law only he must govern, where is the Legislative power, which is the chief of supreme power? When the Law must rule and govern the Monarch, and not the Monarch the Law,

he hath at the most but a Gubernative or
 P.14. Executive power: *If his authority transcends its bounds, if it command beyond the law, and the Subject is not bound legally to subjection in such cases, and if the utmost extent of the law of the land be the measure of the Limited Monarchs*

P.16. *power, and Subjects duty, where shall we find the supreme power, that Culmen or apex potestatis, that prime ἀρχή, which our Author saith, must be in every Monarch: The word ἀρχή, which signifies principality and power, doth also signify principium, beginning; which doth teach us, that by the word Prince, or principality, the principium or beginning of Government is meant; this, if it be given to the Law, it robs the Monarch, and makes the Law the primum mobile; and so that which is but the instrument, or servant to the Monarch, becomes the master. Thus much of the word ἀρχή.*

The other word is Μόνος, *solus, one alone*: the Monarch must not only have the supreme power unlimited, but he must have it alone (with-

P.15. *out any companions.) Our Author teacheth us, He is no Monarch if the Supreme power*

P.17. *be not in one. And again he saith, if you put the apex potestatis, or supreme power, in the*

the whole body, or a part of it, you destroy the being of Monarchy.

Now let us see if his mixed Monarchy be framed according to these his own principles: First, he saith, *in a mixed Monarchy the sovereign power must be originally in all three Estates.* And again, his words are, *The three Estates are all sharers in the supream power — the primity of share in the supream power is in One.* Here we find, that he that told us the supream power must be in one, will now allow his mixed Monarch but one share only of the supream power, and gives other shares to the Estates: thus he destroys the being of Monarchy, by putting the *supream power, or culmen potestatis, or a part of it, in the whole body, or a part thereof*; and yet formerly he confesseth, that *the power of Magistracy cannot well be divided, for it is one simple thing, or indivisible beam of divine perfection*: but he can make this indivisible beam to be divisible into three shares. I have done with the word *Méu* ☉, *solus, alone.* P.5.

I have dwelt the longer upon this definition of Monarchy, because the apprehending of it out of the Authors own grounds, quite overthrows both his *Monarch Limited by Law*, and his *Monarch Mixed with the States*. For to Govern, is to give a Law to others, and not to have a Law given to Govern and limit him that Governs: And to govern alone, is not to have sharers or companions mixed with the Governor. Thus the two words of which Monarchy is compounded, contradict the two sorts of Monarchy which he pleads for; and by consequence his whole Treatise: for these two sorts of *limited and mixed*
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ed Monarchy take up (in a manner) his whole Book.

I will now touch some few particular passages in the Treatise.

P.2. Our Author first confesseth, *it is Gods expresse ordinance there should be Government*; and he proves it by *Gen. 3. 16.* where God ordained *Adam to rule over his Wife, and her desires were to be subject to his*; and as hers, so all theirs that should come of her. Here we have the original grant of Government, and the fountain of all power placed in the *Father* of all mankind; accordingly we finde the *law* for obedience to government given in the terms of *honour thy Father*: not only the constitution of power in general, but the limitation of it to one kind (that is, to Monarchy, or the government of one alone) and the determination of it to the individual person and line of *Adam*, are all three ordinances of God. Neither *Eve* nor her Children could either limit *Adams* power, or joyn others with him in the government; and what was given unto *Adam*, was given in his person to his posterity. This paternal power continued monarchical to the Floud, and after the Floud to the confusion of *Babel*: when Kingdoms were first erected, planted, or scattered over the face of the world, we finde *Gen. 10. 11.* it was done by Colonies of whole families, over which the prime Fathers had supream power, and were Kings, who were all the sons or grand-children of *Noah*, from whom they derived a fatherly and regal power over their families. Now if this supream power was settled and founded by God himself in the fatherhood, how is it possible for the people

to have any right or title to alter and dispose of it otherwise? what commission can they shew that gives them power either of *limitation or mixture*? It was Gods ordinance, that Supremacy should be unlimited in *Adam*, and as large as all the acts of his will: and as in him, so in all others that have supream power, as appears by the judgement and speech of the people to *Joshuah* when he was supream Governour, these are their words to him, *All that thou commandest us we will do; whosoever he be that doth rebel against thy commandment, and will not hearken unto thy words in all that thou commandest him, he shall be put to death*: we may not say that these were evil Councillours or flattering Courtiers of *Joshuah*, or that he himself was a Tyrant for having such arbitrary power. Our Author, and all those who affirm that *power is conveyed to persons by publick consent*, are forced to confess, that it is the fatherly power that first inables a people to make such conveyance; so that admitting(as they hold) that our Ancestors did at first convey power, yet the reason why we now living do submit to such power, is, for that our Fore-fathers every one for himself, his family, and posterity, had a power of resigning up themselves and us to a supream power. As the Scripture teacheth us that *supream power was originally in the fatherhood without any limitation*, so likewise Reason doth evince it, that if God ordained that Supremacy should be, that then Supremacy must of necessity be unlimited: for the power that limits must be above that power which is limited; if it be limited, it cannot be supream: so that if our Author will grant supream power to be the ordinance

nance of God, the supream power will prove it self to be unlimited by the same ordinance, because a supream limited power is a contradiction.

The Monarchical power of *Adam* the Father of all flesh, being by a general binding ordinance settled by God in him and his posterity by right of fatherhood, the form of Monarchy must be preferr'd above other forms, except the like ordinance for other forms can be shewed: neither *may men according to their relations to the form they live under, to their affections and judgments in divers respects, prefer or compare any other form with Monarchy.* The point that most perplexeth our Author and many others, is, that if Monarchy be allowed to be the ordinance of God, *an absurdity would follow, that we should uncharitably condemn all the Communities which have not that form, for violation of Gods ordinance, and pronounce those other powers unlawful.* If those who live under a Monarchy can justify the form they live under to be Gods ordinance, they are not bound to forbear their own justification, because others cannot do the like for the form they live under; let others look to the defence of their own Government: if it cannot be provd or shewd that any other form of government had ever any lawful beginning, but was brought in or erected by Rebellion, must therefore the lawful and just obedience to Monarchy be denied to be the ordinance of God?

To proceed with our Author; in the 3 page he saith, *the Higher Power is Gods ordinance: That it resideth in One or more, in such or such a way, is from humane designment; God by no word binds any people to this or that form, till they by their own act bind themselves.* Because the power and consent

sent of the people in government is the burden of the whole Book, and our author expects it should be admitted as a magisterial postulation, without any other proof than a naked supposition; and since others also maintain that *originally Power was, or now is in the People*, & that *the first Kings were chosen by the People*: they may not be offended, if they be asked in what sense they understand the word [*People*] because this, as many other words, hath different acceptions, being sometimes taken in a larger, otherwhiles in a stricter sense. Literally, and in the largest sense, the word *People* signifies the *whole multitude of mankind*; but *figuratively* and *synecdochically*, it notes many times the *major part* of a multitude, or sometimes the *better*, or the *richer*, or the *wiser*, or some other part; and oftentimes a very small part of the people, if there be no other apparent opposite party, hath the name of the people *by presumption*.

If they understand that the entire multitude or whole people have originally by nature power to chuse a King, they must remember, that by their own principles and rules, by nature all mankind in the world makes but one People, who they suppose to be born alike to an equal freedom from subjection; and where such freedom is, there all things must of necessity be common: and therefore without a joynt consent of the whole people of the world, no one thing can be made proper to any one man, but it will be an injury, and an usurpation upon the common right of all others. From whence it follows, that natural *freedom* being once granted, there cannot be any one man chosen a King without the universal consent of all

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the people of the world at one instant, *nemine contradicente*. Nay, if it be true that *nature* hath made all men free; though all mankind should concur in one vote, yet it cannot seem reasonable, that they should have power to alter the law of nature; for if no man have power to take away his own life without the guilt of being a murderer of himself, how can any people confer such a power as they have not themselves upon any one man, without being accessories to their own deaths, and every particular man become guilty of being *felo de se*?

If this general signification of the word *people* be disavowed, and men will suppose that the *people* of particular Regions or Countries have power and freedom to chuse unto themselves Kings; then let them but observe the consequence: Since nature hath not distinguished the habitable world into Kingdomes, nor determined what part of a *people* shall belong to one Kingdome, and what to another, it follows, that the original freedom of mankind being supposed, every man is at liberty to be of what Kingdome he please, and so every petty company hath a right to make a Kingdom by it self; and not onely every City, but every Village, and every Family, nay and every particular man, a liberty to chuse himself to be his own King if he please; and he were a madman that being by nature free, would chuse any man but himself to be his own Governour. Thus to avoid the having but of one King of the whole world, we shall run into a liberty of having as many Kings as there be men in the world, which upon the matter, is to have no King at all, but to leave
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all men to their natural liberty, which is the mischief the Pleaders for *natural liberty* do pretend they would most avoid.

But if neither the whole people of the world, nor the whole people of any part of the world be meant, but only the *major part*, or some other part of a part of the world; yet still the objection will be the stronger. For besides that nature hath made no partition of the world, or of the people into distinct Kingdomes, and that without an universal consent at one and the same instant no partition can be made: yet if it were lawful for particular parts of the world by consent to chuse their Kings, nevertheless their elections would bind none to subjection but only such as consented; for the *major part* never binds, but where men at first either agree to be so bound, or where a higher power so commands: Now there being no higher power than nature, but God himself; where neither nature nor God appoints the *major part* to bind, their consent is not binding to any but only to themselves who consent.

Yet, for the present to gratifie them so far as to admit that either by nature, or by a general consent of all mankind, the world at first was divided into particular Kingdomes, and the *major part* of the people of each Kingdome assembled, allowed to chuse their King: yet it cannot truly be said that ever the *whole people*, or the *major part*, or indeed any considerable part of the whole people of any nation ever assembled to any such purpose. For except by some secret miraculous instinct they should all meet at one time, and place, what one man, or company of men less than the whole

people hath power to appoint either time or place of elections, where all be alike *free by nature*? and without a lawful summons, it is most unjust to bind those that be absent. The whole people cannot summon it self; one man is sick, another is lame, a third is aged, and a fourth is under age of discretion: all these at some time or other, or at some place or other, might be able to meet, if they might chuse their own time and place, as men naturally free should.

In Assemblies that are by humane politique constitution, the superior power that ordains such assemblies, can regulate and confine them, both for time, place, persons, and other circumstances: but where there is an equality by nature, there can be no superior power; there every Infant at the hour it is born in, hath a like interest with the greatest and wisest man in the world. Mankind is like the sea, ever ebbing or flowing, every minute one is born, another dies; those that are the people this minute, are not the people the next minute, in every instant and point of time there is a variation: no one time can be indifferent for all mankind to assemble; it cannot but be mischievous always at the least to all Infants, and others under age of discretion; not to speak of women, especially Virgins, who by birth have as much *natural freedom* as any other, and therefore ought not to lose their liberty without their own consent.

But in part to salve this, it will be said that Infants and Children may be concluded by the votes of their Parents. This remedy may cure some part of the mischief, but it destroys the whole cause, and at last stumbles upon the true
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original of government. For if it be allowed, that the acts of Parents bind the Children, then farewell the doctrine of the *natural freedom of mankind*; where subjection of Children to Parents is natural, there can be no natural freedom. If any reply, that not all Children shall be bound by their Parents consent, but only those that are under age: It must be considered, that in nature there is no *nonage*; if a man be not born free, he doth not assign him any other time when he shall attain his freedom: or if he did, then Children attaining that age, should be discharged of their Parents contract. So that in conclusion, if it be imagined that the people were ever but once free from subjection by nature, it will prove a meer impossibility ever lawfully to introduce any kind of government whatsoever, without apparent wrong to a multitude of people.

It is further observable, that ordinarily Children and Servants are far a greater number than Parents and Masters; and for the major part of these to be able to vote and appoint what Government or Governours their Fathers and Masters shall be subject unto, is most unnatural, and in effect to give the Children the government over their Parents.

To all this it may be opposed, What need dispute how a people can chuse a King, since there be multitude of examples that Kings have been, and are now adays chosen by their people? The answer is, 1. The question is not of the *fact*, but of the *right*, whether it have been done by a *natural*, or by an *usurped* right. 2. Many Kings are, and have bin chosen by some small part of a
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people ; but by the *the whole*, or *major part* of a Kingdom not any at all. Most have been elected by the Nobility, Great men, and Princes of the blood, as in *Poland*, *Denmarke*, and in *Sweden*; not by any *collective* or *representative* body of any Nation: sometimes a factious or seditious City, or a mutinous Army hath set up a King, but none of all those could ever prove they had *right* or just title either by *nature*, or any otherwife, for such elections. We may resolve upon these two propositions : 1. *That the people have no power or right of themselves to chuse Kings.* 2. *If they had any such right, it is not possible for them any way lawfully to exercise it.*

You will say, *There must necessarily be a right in somebody to elect, in case a King die without an Heir.* I answer, *No King can die without an Heir, as long as there is any one man living in the world.* It may be the Heir may be unknown to the people; but that is no fault in nature, but the negligence or ignorance of those whom it concerns. But if a King could die without an Heir, yet the Kingly power in that case shall not escheat to the whole people, but to the supream Heads and Fathers of Families ; not as they are the *people*, but *quatenus* they are Fathers of people, over whom they have a supream power devolved unto them after the death of their soveraign Ancestor : and if any can have a right to chuse a King, it must be these Fathers, by conferring their distinct fatherly powers upon one man alone. Chief fathers in Scripture are accounted as all the people, as *all the Children of Israel*, as *all the Congregation*, as the Text plainly expounds it self, 2 Chr. 1. 2. where *Solomon* speaks to *All Israel*,

Israel, that is, to the Captains, the Judges, and to every Governour, the CHIEF OF THE FATHERS: and so the *Elders of Israel* are expounded to be *the chief of the Fathers of the Children of Israel*, 1 *King.* 8. 1. and the 2 *Chr.* 5. 2.

If it be objected, That Kings are not now (as they were at the first planting or peopling of the world) the Fathers of their People or Kingdoms, and that the fatherhood hath lost the right of governing; An answer is, That all Kings that now are, or ever were, are, or were either Fathers of their people, or the Heirs of such Fathers, or Usurpers of the right of such Fathers. It is a truth undeniable, that there cannot be any multitude of men whatsoever, either great, or small, though gathered together from the several corners and remotest regions of the world, but that in the same multitude, considered by it self, there is one man amongst them that in nature hath a right to be the King of all the rest, as being the next Heir to *Adam*, and all the others subject unto him: every man by nature is a King, or a Subject: the obedience which all Subjects yeild to Kings, is but the paying of that duty which is due to the supream fatherhood: Many times by the act either of an Usurper himself, or of those that set him up, the true Heir of a Crown is dispossessed, God using the ministry of the wickedest men for the removing and setting up of Kings: in such cases the Subjects obedience to the fatherly power must go along and wait upon Gods providence, who only hath right to give and take away Kingdoms, and thereby to adopt Subjects into the obedience of another fatherly power: according to

that of *Arist.* Πατερικὴ γὰρ αἰσχὴ βούλεται ἡ βασιλεία εἶναι. *A Monarchy or Kingdom will be a fatherly government. Ethic. l. 8. c. 12.*

However the *natural freedome of the people* be cried up as the sole means to determine the kind Government and the Governours : yet in the close, all the favourers of this opinion are constrained to grant that the obedience which is due to the fatherly power is the true and only cause of the subjection which we that are now living give to Kings, since none of us gave consent to government, but only our Fore-fathers act and consent hath concluded us.

Whereas many confess that Government only in the *abstract* is the ordinance of God, they are not able to prove any such ordinance in the Scripture, but only in the fatherly power, and therefore we find the Commandment that enjoyns obedience to superiours, given in the terms of *Honour thy Father* : so that not onely the *power or right of government*, but the *form of the power of governing*, and the *person having that power*, are all the ordinance of God : the first Father had not only simply power, but power Monarchical, as he was a Father, immediately from God. For by the appointment of God, as soon as *Adam* was created he was Monarch of the World, though he had no subjects ; for though there could not be actual government until there were Subjects, yet by the right of nature it was due to *Adam* to be Governour of his posterity : though not in *act*, yet at least in *habit*, *Adam* was a King from his Creation : And in the state of innocency he had been Governour of his Children ; for the *integrity or excellency* of the

the subjects doth not take away the *order* or *eminency* of the Governour. *Eve* was subject to *Adam* before he sinned; the Angels, who are of a pure nature, are subject to God: which confutes their saying, who in disgrace of civil Government or power say it was brought in by sin: Government as to *coactive power* was after sin, because coercion supposeth some disorder, which was not in the state of innocency: But as for *directive power*, the condition of humane nature requires it, since civil society cannot be imagined without power of Government: for although as long as men continued in the state of innocency they might not need the direction of *Adam* in those things which were *necessarily* and *morally* to be done; yet things *indifferent*, that depended meerly on their free will, might be directed by the power of *Adams* command.

If we consider the first plantations of the world which were after the building of *Babel* when the confusion of tongues was, we may find the division of the earth into distinct Kingdomes and Countries, by several families, whereof the Sons or Grand-children of *Noah* were the Kings or Governours by a fatherly right; and for the preservation of this power and right in the Fathers, God was pleased upon several Families to bestow a Language on each by it self, the better to unite it into a Nation or Kingdom; as appears by the words of the Text, *Gen. 10. These are the Families of the Sons of Noah, after their generations in their Nations, and by these were the Nations divided in the earth after the flood: Every one after HIS TONGUE, AFTER THEIR FAMILIES in their Nations.*

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The Kings of *England* have been gratiouſly pleaſed to admit and accept the Commons in Parliament as the repreſentees of the Kingdom, yet really and truly they are not the repreſentative body of the whole Kingdom.

The commons in Parliament are not the repreſentative body of the whole Kingdom; they do not repreſent the King, who is the head and principal member of the Kingdom; nor do they repreſent the Lords, who are the nobler and higher part of the body of the Realm, and are perſonally preſent in Parliament, and therefore need no repreſentation. The Commons onely repreſent a part of the lower or inferior part of the body of the People, which are the Free-holders worth 40 s. by the year, and the Commons or Free-men of Cities and Burroughs, or the *major part* of them. All which are not one quarter, nay, not a tenth part of the Commons of the Kingdom; for in every Pariſh, for one Free-holder there may be found ten that are no Free-holders: and anciently before Rents were improved, there were nothing neer ſo many Free-holders of 40 s. by the year as now are to be found.

The ſcope and Concluſion of this diſcourſe and Argument is, That the people taken in what notion or ſenſe ſoever, either *diffuſively*, *collectively*, or *repreſentatively*, have not, nor cannot exerciſe any right or power of their own by nature, either in chuſing or in regulating Kings. But whatſoever power any people doth lawfully exerciſe, it muſt receive it from a ſupream power on earth, and practice it with ſuch limitations as that ſuperior power ſhall appoint. To return to our Author.

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He divides Monarchy into $\left\{ \begin{array}{l} \text{Absolute,} \\ \text{Limited.} \end{array} \right.$

Absolute Monarchy (saith he) is, when the P.6.
Sovereignty is so fully in one, that it hath no limits or bounds under God but his own will. This definition of his I embrace. And as before I charged our Author for not giving us a definition of Monarchy in general, so I now note him for not affording us any definition of any other particular kind of Monarchy but onely of absolute: it may peradventure make some doubt that there is no other sort but only that which he calls *absolute*.

Concerning *absolute Monarchy*, he grants, that *such were the antient Eastern Monarchies, and that of the Turk and Persian at this day.* Herein he saith very true. And we must remember him, though he do not mention them, that the Monarchs of *Judah* and *Israel* must be comprehended under the number of those he calls the *Eastern Monarchies*: and truly if he had said that all the antient Monarchies of the world had been absolute, I should not have quarrelled at him, nor do I know who could have disproved him.

Next it follows, that *Absolute Monarchy is, when a people are absolutely resigned up, or resign up themselves to be governed by the will of One man* — Where men put themselves into this utmost degree of subjection by oath and contract, or are born and brought unto it by Gods providence. In both these places he acknowledgeth there may be other means of obtaining a Monarchy, besides the contract of a Nation or peoples resigning up themselves to be governed, which is contrary to what he after saies, that *the sole mean or root of all Sovereignty, is the consent and fundamental contract of a Nation of men.* P.12.
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Moreover, the Author determines, that *Absolute Monarchy is a lawful government, and that men may be born and brought unto it by Gods providence; it binds them, and they must abide it, because, an oath to a lawful thing is obligatory.* This Position of his I approve, but his Reason doth not satisfie; for men are bound to obey a lawful Governour, though neither they nor their Ancestors ever took oath.

Then he proceeds, & confesseth that in *Rom. P.7. 13. the power which then was, was Absolute: yet the Apostle not excluding it, calls it Gods ordinance, and commands subjection to it. So Christ commands Tribute to be paid, and pays it himself; yet it was an arbitrary tax, the production of an absolute power.* These are the loyal expressions of our Author touching *absolute or arbitrary Monarchy.* I do the rather mention these passages of our Author, because very many in these days do not stick to maintain, that an arbitrary or Absolute Monarch not limited by law, is all one with a Tyrant; and to be governed by one mans will, is to be made a slave. It is a question whether our Author be not of that minde, when he saith, *absolute subjection is servitude:* and thereupon a late friend to limited Monarchy affirms in a *P.54. discourse upon the question in debate between the King and Parliament, That to make a King by the standard of Gods word, is to make the Subjects slaves for conscience sake.* A hard saying, and I doubt whether he that gives this censure can be excused from blasphemy. It is a bold speech, to condemn all the Kings of *Judah* for Tyrants, or to say all their Subjects were slaves. But
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certainly the man doth not know neither what a Tyrant is, or what a Slave is: indeed the words are frequent enough in every mans mouth, and our old English Translation of the Bible useth sometimes the word *Tyrant*; but the Authors of our new Translation have been so careful, as not once to use the word, but onely for the proper name of a man, *Act. 19. 9.* because they find no Hebrew word in the Scripture to signifie a *Tyrant* or a *Slave*. Neither *Aristotle*, *Bodin*, nor Sir *Walter Rawleigh*, (who were all men of deep judgement) can agree in a definition or description of *Tyranny*, though they have all three laboured in the point. And I make some question whether any man can possibly describe what a *Tyrant* is, and then tell me any one man that ever was in the world that was a *Tyrant* according to that description.

I return again to our Treatise of Monarchy, where I find three DEGREES of absolute Monarchy.

1. *Where the Monarch, whose will is the law, doth set himself no law to rule by, but by commands of his own judgement as he thinks fit.*

2. *When he sets a law by which he will ordinarily govern, reserving to himself a liberty to vary from it as oft as in his discretion he thinks FIT; and in this the Sovereign is as free as the former.*

3. *Where he not onely sets a rule, but promiseth in many cases not to alter it; but this promise or engagement is an after-condescend or act of grace, not dissolving the absolute Oath of subjection which went before it.*

For the first of these three, there is no question but it is a pure absolute Monarchy; but as for the
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the other two, though he say *they be absolute*, yet in regard they set themselves limits or laws to govern by, if it please our Author to term them *limited Monarchs*, I will not oppose him; yet I must tell him, that his third degree of absolute Monarchy is such a kind, as I believe, never hath been, nor ever can be in the world. For a Monarch to promise and engage in many cases not to *alter a law*, it is most necessary that those many cases should be particularly expressed at the bargain making. Now he that understands the nature and condition of all *humane laws*, knows that particular cases are infinite, and not comprehensible within any rules or laws: and if many cases should be comprehended, and many omitted, yet even those that were comprehended would admit of variety of interpretations and disputations; therefore our Author doth not, nor can tell us of any such reserved cases promised by any Monarch.

Again, where he saith, *An after-condescend or Act of grace doth not dissolve the absolute Oath of subjection which went before it*; though in this he speak true, yet still he seems to insinuate, that an *Oath onely binds to subjection*, which Oath, as he would have us believe, was at first *arbitrary*: whereas Subjects are bound to obey Monarchs though they never *take oath of subjection*, as well as children are bound to obey their parents, though they never swear to do it.

Next, his distinction between *the rule of*
 P.7. *power, and the exercise of it*, is vain; for *to rule*,
 P.1. *is to exercise power*: for himself saith, that
Government is potestatis exercitium, the exercise of a moral power. Lastly,

Lastly, whereas our Author saith, *a Monarch cannot break his promise without sin*; let me add, that if the safety of the people, *salus populi*, require a breach of the Monarchs promise, then the sin, if there be any, is rather in the *making*, than *breaking of the promise*; the *safety of the people* is an exception implied in every Monarchical promise.

But it seems these three degrees of Monarchy do not satisfy our Author; he is not content to have a Monarch have a Law or rule to govern by, but he must have *this limitation or* P.12. *law to be ab externo, from somebody else, and not from the determination of the Monarchs own will*; and therefore he saith, *By original constitution the society publick confers on one man a power by limited contract, resigning themselves to be governed by such a Law*: also before he told us, the P.13. *sole means of Sovereignty is the consent and fundamental contract; which consent puts them in their power, which can be no more nor other than is conveyed to them by such contract of subjection*. If the sole means of a limited Monarchy be the consent and fundamental contract of a Nation, how is it that he saith, *A Monarch may be limited by after-condescent*? is an after-condescent *all one* with a fundamental contract, with original and radical constitution? why yea: he tells us *it is a secondary original constitution*, a secondary original, that is, *a second first*: And if that condescent be an act of grace, doth not this condescent to a limitation come from the free determination of the Monarchs will? If he either *formally, or virtually* (as our Author supposeth) *desert his absolute*

or arbitrary power which he hath by conquest, or other right.

And if it be from the free will of the Monarch, why doth he say the limitation must be *ab*
 P.8. *externo*? he told us before, that *subjection cannot be dissolved or lessen'd by an Act of grace coming afterwards*: but he hath better be-
 thought himself, and now he will have *acts of grace to be of two kinds, and the latter kind may amount* (as he saith) *to a resignation of absolute Monarchy*. But can any man believe that a Monarch who by conquest or other right hath an absolute arbitrary power, will voluntarily resigne that absoluteness, and accept so much power onely as the people shall please to give him, and such laws to govern by as they shall make choice of? can he shew that ever any Monarch was so gracious or kind-hearted as to lay down his lawful power freely at his Subjects feet? is it not sufficient grace if such an absolute Monarch be content to set down a Law to himself by which he will ordinarily govern, but he must needs relinquish his old independent commission, and take a new one from his Subjects, clog'd with limitations?

Finally, I observe, that howsoever our Author speak big of the radical, fundamental, and original power of the people as the root of all Sovereignty: yet in a better moode he will take up, and be contented with a Monarchy limited by an after-condescendent and act of grace from the Monarch himself.

Thus I have briefly touched his grounds of *Limited Monarchy*; if now we shall ask, what proof or examples he hath to justify his doctrine,
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he is as mute as a fish: onely *Pythagoras* hath said it, and we must believe him; for though our Author would have Monarchy to be limited, yet he could be content his opinion should be absolute, and not limited to any rule or example.

The main Charge I have against our Author now remains to be discussed; and it is this, That instead of a Treatise of *Monarchy*, he hath brought forth a Treatise of *Anarchy*, and that by his own confessions shall be made good.

First, he holds, *A limited Monarch transcends his bounds if he commands beyond the law; and the Subject legally is not bound to subjection in such cases.*

Now if you ask the Author who shall be judge whether the Monarch transcend his bounds, and of the excesses of the sovereign power;

His answer is, *There is an impossibility of constituting a judge to determine this last controversy.* — P.16.

I conceive in a limited legal Monarchy there can be no stated internal Judge P.17.

of the Monarchs actions, if there grow a fundamental variance betwixt him and the community. There

can be no Judge legal and constituted within that form of government. In these answers it appears,

there is no Judge to determine the Sovereigns or the Monarchs transgressing his fundamental limits: yet our Author is very cautelous, and supposeth onely a fundamental variance betwixt the Monarch and the Community; he is ashamed to put the question home. I demand of him if there be a variance betwixt the Monarch and any of the meanest persons of the Community, who shall be the Judge? for instance, *The King commands me,*

or gives judgement against me: I reply, *His commands are illegal, and his judgment not according to Law: who must judge? if the Monarch himself judge, then you destroy the frame of the State, and make it absolute, saith our Author; and he gives his reason: for, to define a Monarch to a Law, and then to make him judge of his own deviations from that Law, is to absolve him from all Law. On the other side, if any, or all the people may judge, then you put the Sovereignty in the whole body, or part of it, and destroy the being of Monarchy. Thus our Author hath caught himself in a plain dilemma: If the King be judge, then he is no limited Monarch; If the people be judge, then he is no Monarch at all. So farewell limited Monarchy, nay farewell all government if there be no Judge.*

Would you know what help our Author hath found out for this mischief? First, he saith, P.14. *that a Subject is bound to yield to a Magistrate, when he cannot, de jure, challenge obedience, if it be in a thing in which he can possibly without subversion, and in which his act may not be made a leading case, and so bring on a prescription against publick liberty: Again he saith, P.17. If the act in which the exorbitance or transgression of the Monarch is supposed to be, be of lesser moment, and not striking at the very being of that Government, it ought to be born by publick patience, rather than to endanger the being of the State. The like words he uses in another place, saying, P.49. If the will of the Monarch exceed the limits of the law, it ought to be submitted to, so it be not contrary to Gods Law, nor bring with it such an evil to our selves, or the publick*

publick, that we cannot be accessary to it by obeying. These are but fig-leaves to cover the nakedness of our Authors limited Monarch, formed upon weak supposals in cases of lesser moment. For if the Monarch be to govern onely according to Law, no transgression of his can be of so small moment if he break the bounds of Law, but it is a subversion of the government it self, and may be made a leading case, and so bring on a prescription against publick liberty; it strikes at the very being of the Government, and brings with it such an evil, as the party that suffers, or the publick cannot be accessory to: let the case be never so small, yet if there be illegality in the act, it strikes at the very being of *limited Monarchy*, which is to be legal: unless our Author will say, as in effect he doth, That his limited Monarch must govern according to Law in great and publick matters onely, and that in smaller matters which concern private men, or poor persons, he may rule according to his own will.

Secondly, our Author tells us, *if the Monarchs act of exorbitancy or transgression be mortal, and such as suffered dissolves the frame of Government and publick liberty, then the illegality is to be set open, and redressment sought by petition; which if failing, prevention by resistance ought to be: and if it be apparent, and appeal be made to the consciences of mankind, then the fundamental Laws of that Monarchy must judge and pronounce the sentence in every mans conscience, and every man (so far as concerns him) must follow the evidence of Truth in his own soul to oppose or not to oppose, according as he can in conscience acquit or condemn the act of the governour or Monarch.* P.17.

Whereas my Author requires, that the *destructive nature of illegal commands should be set open*: Surely his mind is, That each private man in his particular case should make a publick remonstrance to the world of the illegal act of the Monarch; and then if upon his Petition he cannot be relieved according to his desire, he ought, or it is his duty to make resistance. Here I would know, who can be the judge whether the illegality be made apparent? it is a main point, since every man is prone to flatter himself in his own cause, and to think it good, and that the wrong or injustice he suffers is apparent, when other moderate and indifferent men can discover no such thing: and in this case the judgement of the common people cannot be gathered or known by any possible means; or if it could, it were like to be various and erroneous.

Yet our Author will have *an appeal made to the conscience of all Man-kind*, and that being made, he concludes, *The fundamental Laws must judge, and pronounce sentence in every mans conscience.*

P.18. Whereas he saith, *The Fundamental Laws must judge*; I would very gladly learn of him, or of any other for him, what a Fundamental Law is, or else have but any one Law named me that any man can say is a Fundamental Law of the Monarchy. I confess he tells us, that

P.38. *the Common Laws are the foundation, and the Statute Laws are superstruative*; yet I think he dares not say that there is any one branch or part of the Common Law, but that it may be taken away by an act of Parliament: for many points of the Common Law (*de facto*) have, and
(*de*

(*de jure*) any point may be taken away. How can that be called Fundamental, which hath and may be removed, and yet the Statute-Laws stand firm and stable? It is contrary to the nature of Fundamental, for the building to stand when the foundation is taken away.

Besides, the Common Law is generally acknowledged to be nothing else but common usage or custome, which by length of time onely obtains authority: So that it follows in time after Government, but cannot go before it, and be the rule to Government, by any original or radical constitution.

Also the Common Law being unwritten, doubtful, and difficult, cannot but be an uncertain rule to govern by; which is against the nature of a rule, which is and ought to be certain.

Lastly, by making the common Law onely to be the foundation, *Magna Charta* is excluded from being a Fundamental Law, and also all other Statutes from being limitations to Monarchy, since the Fundamental Laws onely are to be judge.

Truly the conscience of all Man-kind is a pretty large Tribunal for the Fundamental Laws to pronounce sentence in. It is very much that Laws which in their own nature are dumb, and always need a Judge to pronounce sentence, should now be able to speak, and pronounce sentence themselves: such a sentence surely must be upon the hearing of one party onely; for it is impossible for a Monarch to make his defence and answer, and produce his witnesses, in every mans conscience, in each mans cause, who will but question the legality of the Monarchs Government. Certainly

tainly the sentence cannot but be unjust, where but one mans tale is heard. For all this, the conclusion is, *Every man must oppose or not oppose the Monarch according to his own conscience.* Thus at the last, every man is brought, by this Doctrine of our Authors, to be his own judge. And I also appeal to the consciences of all man-kind, whether the end of this be not utter confusion, and Anarchy.

Yet after all this, the Author saith, P.18. *This power of every mans judging the illegal acts of the Monarch, argues not a superiority of those who judge over him who is judged; and he gives a profound reason for it; his words are, It is not authoritative and civil, but moral, residing in reasonable creatures, and lawful for them to execute.* What our Author means by these words, (*not authoritative and civil, but moral*) perhaps I understand not, though I think I do; yet it serves my turn that he saith, that *resistance ought to be made, and every man must oppose or not oppose, according as in conscience he can acquit or condemn the acts of his Governour; for if it enable a man to resist and oppose his Governour, without question 'tis authoritative and civil.* Whereas he adds, that *moral judgment is residing in reasonable creatures, and lawful for them to execute;* he seems to imply, that authoritative, and civil judgement doth not reside in reasonable creatures, nor can be lawfully executed: Such a conclusion fits well with Anarchy; for he that takes away all Government, and leaves every man to his own conscience, and so makes him an independent in State, may well teach that authority resides not in reasonable creatures, nor can be lawfully executed,
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I pass from his absolute and limited Monarchy, to his division or partition (for he allows no division) of Monarchy into *simple* and *mixed*, viz. of a *Monarch*, the *Nobility*, and *Community*.

Where first, observe a doubt of our Authors, *whether a firm union can be in a mixture of equality; he rather thinks there must be a priority of order in one of the three, or else there can be no unity.* He must know, that priority of order doth not hinder, but that there may be an equality of mixture, if the shares be equal; for he that hath the first share may have no more than the others: so that if he will have an inequality of mixture, a primity of share will not serve the turn: the first share must be greater or better than the others, or else they will be equal, and then he cannot call it a mixed Monarchy, where onely a primity of share in the Supream power is in one: but by his own confession he may better call it a mixed Aristocracy or mixed Democracy, than a mixed Monarchy, since he tells us, *the Houses of Parliament sure have two parts of the greatest legislative authority; and if the King have but a third part, sure their shares are equal.*

The first step our Author makes, is this, *The sovereign power must be originally in all three; next he finds, that if there be an equality of shares in three Estates, there can be no ground to denominate a Monarch; and then his mixed Monarch might be thought but an empty title: Therefore in the third place he resolves us, that to save all, A power must be sought out wherewith the Monarch must be invested, which is not so great as to destroy the mixture, nor so titular as to destroy the*

P.25.

P.56.

P.25.

Monarchy; and therefore he conceives it may be in these particulars.

First, *a Monarch in a mixed Monarchy*
 P.26. *may be said to be a Monarch* (as he conceives) *if he be the head and fountain of the power which governs and executes the established Laws*; that is, a man may be a Monarch, though he do but give power to others to govern and execute the established Laws: thus he brings his Monarch one step or peg lower still than he was before: at first he made us believe his Monarch should have the supream power, which is the legislative; then he falls from that, and tells us, A limited Monarch must govern according to Law onely; thus he is brought from the legislative to the gubernative or executive power onely; nor doth he stay here, but is taken a hole lower, for now he must not govern, but *he must constitute Officers to govern by Laws*; if chusing Officers to govern be governing, then our Author will allow his Monarch to be a Governour, not else: and therefore he that divided *Supream power* into legislative and gubernative, doth now divide it into legislative, and *power of constituting Officers* for governing by Laws; and *this he saith is left to the Monarch*. Indeed you have left him a fair portion of power, but are we sure he may enjoy this? it seems our Author is not confident in this neither, and some others do deny it him: our Author speaking of the government of this Kingdome, saith, *The*
 P.38. *choice of the Officers is intrusted to the judgment of the Monarch for ought I know*: he is not resolute in the point; but for ought he knows, and for ought I know, his Monarch is

is but titular, an empty title, certain of no power at all.

The power of chusing Officers onely, is the basest of all powers. *Aristotle* (as I remember) saith, *The common people are fit for nothing but to chuse Officers, and to take accompts*: and indeed, in all popular governments the multitude perform this work: and this work in a King puts him below all his Subjects, and makes him the onely subject in a Kingdom, or the onely man that cannot Govern: there is not the poorest man of the multitude but is capable of some Office or other, and by that means may sometime or other perhaps govern according to the Laws; onely the King can be no Officer, but to chuse Officers; his Subjects may all Govern, but he may not.

Next, I cannot see how in true sence our Author can say, *his Monarch is the head and fountain of power*, since his doctrine is, that in a limited Monarchy, the publick Society by original constitution confer on one man power: is not then the publick society the head and fountain of power, and not the King?

Again, when he tells us of his Monarch, that *both the other States, as well conjunctim as divisim, be his sworn subjects, and owe obedience to his commands*: he doth but flout his poor Monarch; for why are they called his Subjects and his Commons? he (without any complement) is their Subject; for they, as Officers, may govern and command according to Law: but he may not, for he must judge by his judges in Courts of Justice onely: that is, he may not judge or govern at all.

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2. As for the second particular, *The sole or chief power in capacitating persons for the Supream power.* And

3. As to this third particular, *The power of convocating such persons*, they are both so far from making a Monarch, that they are the onely way to make him none, by choosin^g and calling others to share in the Supream power.

4. Lastly, concerning *his Authority being the last and greatest in the establis^hing every Act*, it makes him no Monarch, except he be sole that hath that Authority; neither his *primity* of share in the Supream power, nor *his Authority being last*, no, nor *his having the greatest Authority*, doth make him a Monarch, unless he have that Authority alone.

Besides, how can he shew that in his mixed Monarchy the Monarchs power is the greatest? The greatest share that our Author allows him in the Legislative power, is a Negative voice, and the like is allowed to the Nobility and Commons: And truly, a Negative voice is but a base term to express a Legislative power; a Negative voice is but a privative power, or indeed, no power at all to do any thing, onely a power to hinder an Act from being done.

Wherefore I conclude, not any of his four,
P.26. nor all of them put into one person, makes the State Monarchical.

This mixed Monarchy, just like the limited, ends in confusion and destruction of all Government:

you shall hear the Authors confession, *That*
P.28. *one inconvenience must necessarily be in all mixed Governments, which I shewed to be in limited Governments; there can be no constituted legal Authoritative Judge of the Fundamental Controversies arising between the three Estates: If such do rise, it is*
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the fatal disease of those Governments, for which no salve can be applyed. It is a case beyond the possible provision of such a Government; of this question there is no legal judge. The accusing side must make it evident to every mans Conscience. — The appeal must be to the community, as if there were no Government; and as by evidence Consciences are convinced, they are bound to give their assistance. The wit of man cannot say more for Anarchy.

Thus have I picked out the flowers out of his Doctrine about limited Monarchy, and presented them with some brief Annotations; it were a tedious work to collect all the learned contradictions, and ambiguous expressions that occur in every page of his Platonick Monarchy; the Book hath so much of fancy, that it is a better piece of Poetry than Policy.

Because many may think, that the main Doctrine of *limited* and *mixed* Monarchy may in it self be most authentical, and grounded upon strong and evident reason, although our Author perhaps have failed in some of his expressions, and be liable to exceptions: Therefore I will be bold to enquire, whether *Aristotle* could find either reason or example, of a *limited* or *mixed* Monarchy; and the rather, because I find our Author altogether insists upon a rational way of justifying his opinion. No man I think will deny, but that *Aristotle* was sufficiently curious in searching out the several forms of Common-wealths and Kingdoms; yet I do not find, that he ever so much as dreamed of either a *limited* or *mixed* Monarchy. Several other sorts of Monarchies he reckons up: in the Third Book of his Politicks, he spends three whole Chapters

ters together, upon the several kinds of Monarchy.

First, in his fourteenth Chapter he mentions four kinds of Monarchy.

*The Laconique or Lacedemonian,
The Barbarique.
The Æsymnetical,
The Heroique.*

The Laconique or Lacedemonian King, (saith he) had onely Supream power when he was out of the bounds of the Lacedemonian Territories; then he had absolute power, his Kingdom was like to a perpetual Lord General of an Army.

The Barbarique King (saith Aristotle) had a power very near to Tyranny; yet they were lawful and Paternal, because the Barbarians are of a more servile nature than the Grecians, and the Asiaticques than the Europeans; they do willingly, without repining, live under a Masterly Government; yet their Government is stable and safe, because they are Paternal and lawful Kingdoms, and their Guards are Royal and not Tyrannical: for Kings are guarded by their own Subjects, and Tyrants are guarded by Strangers.

The Æsymnetical King (saith Arist.) in old time in Greece, was an Elective Tyrant, and differed onely from the Barbarian Kings, in that he was Elective and not Paternal; these sorts of Kings, because they were Tyrannical, were Masterly; but because they were over such as voluntarily Elec^ted them, they were Regal.

The Heroique were those (saith Aristotle) which flourished in the Heroical times, to whom the people did willingly obey; and they were Paternal and lawful, because these Kings did deserve well of the multitude,
either

either by teaching them Arts, or by Warring for them, or by gathering them together when they were dispersed, or by dividing Lands amongst them: these Kings had Supreme power in War, in Sacrifices, in Judicature.

These four sorts of Monarchy hath Aristotle thus distinguished, and after sums them up together, and concludes his Chapter as if he had forgot himself, and reckons up a fifth kind of Monarchy; which is, saith he, *When one alone hath Supream power of all the rest: for as there is a domestical Kingdom of one house, so the Kingdom of a City, or of one or many Nations, is a Family.*

These are all the sorts of Monarchy that Aristotle hath found out, and he hath strained hard to make them so many: first, for his Lacedemonian King, himself confesseth that he was but a kind of Military Commander in War, and so in effect no more a King than all Generals of Armies: And yet this No-king of his was not limited by any Law, nor mixed with any companions of his Government: when he was in the Wars out of the Confines of Lacedemon, he was, as Aristotle styles him, *Ἀντοκράτωρ*, of full and absolute command, no Law, no companion to govern his Army but his own will.

Next, for Aristotles *Æsymmetrical* King, it appears, he was out of date in Aristotles time, for he saith, he was amongst the antient Greeks, *ἐν τοῖς ἀρχαίοις Ἑλλήσιν*. Aristotle might well have spared the naming him, (if he had not wanted other sorts) for the honour of his own Nation: for he that but now told us the Barbarians were of a more servile nature than the Grecians, comes here, and tells us, that these old Greek Kings were Elective Tyrants. The Barbarians did but suffer Tyrants in shew, but the old Gre-

Grecians chose Tyrants indeed ; which then must we think were the greater slaves, the *Greeks* or the *Barbarians* ? Now if these sorts of Kings were Tyrants, we cannot suppose they were limited either by Law, or joyned with companions : Indeed *Arist.* saith, some of these Tyrants were limited to certain times and actions , for they had not all their power for term of life , nor could meddle but in certain businesses ; yet during the time they were Tyrants , and in the actions whereto they were limited , they had absolute power to do what they list according to their own will , or else they could not have been said to be Tyrants.

As for *Aristotles Heroick King* , he gives the like note upon him, that he did upon the *Æsymnet*, that he was in old time *καὶ τῶν ἡγεμονικῶν χρόνων*, in the Heroick times. The thing that made these Heroical Kingdoms differ from other sorts of Kingdoms, was only the means by which the first Kings obtained their Kingdoms , and not the manner of Government, for in that they were as absolute as other Kings were, without either limitation by Law, or mixture of companions.

Lastly, as for *Arist. Barbarick* sort of Kings, since he reckoned all the world *Barbarians* except the *Grecians*, his *Barbarick King* must extend to all other sorts of Kings in the world, besides those of *Greece*, and so may go under *Aristotles* fifth sort of Kings, which in general comprehends all other sorts , and is no special form of Monarchy.

Thus upon a true accompt it is evident, that the five severall sorts of Kings mentioned by *Aristotle* , are at the most but different and accidental means of the first obtaining or holding of Monarchies ,
and

and not real or essential differences of the manner of Government, which was always absolute, without either limitation or mixture.

I may be thought perhaps to mistake, or wrong *Aristotle*, in questioning his diversities of Kings; but it seems *Aristotle* himself was partly of the same mind; for in the very next Chapter, when he had better considered of the point, he confessed, that *to speak the truth, there were almost but two sorts of Monarchies worth the considering, that is, his first or Laconique sort, and his fifth or last sort, where one alone hath Supream power over all the rest*: thus he hath brought his five sorts to two. Now for the first of these two, his *Lacedemonian King*, he hath confessed before, that *he was no more than a Generalissimo of an Army*, and so upon the matter no King at all: and then there remains onely his last sort of Kings, *where one alone hath the Supream power*. And this in substance is the final resolution of *Aristotle* himself: for in his sixteenth Chapter, where he delivers his last thoughts touching the kinds of Monarchy, he first dischargeth his *Laconick King* from being any sort of Monarchy, and then gives us two exact rules about Monarchy; and both these are pointblank against limited and mixed Monarchy; therefore I shall propose them to be considered of, as concluding all Monarchy to be absolute and Arbitrary.

1. The one Rule is, that *he that is said Arist.*
to be a King according to Law, is no sort pol. l. 3.
of Government or Kingdom at all: Ο κατ' νόμον c. 16.
βασιλεύς εκ εσιν εις πολυσείας.

2. The second rule is, that *a true King is he that*
ruleth all according to his own will, κατ' την αυτη βελησιν.

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This latter frees a Monarch from the mixture of partners or sharers in Government, as the former rule doth from limitation by Laws.

Thus in brief I have traced *Aristotle* in his crabbed and broken passages, touching diversities of Kings; where he first finds but four sorts, and then he stumbles upon a fifth; and in the next Chapter contents himself onely with two sorts of Kings, but in the Chapter following concludes with one, which is the true perfect Monarch, who rules all by his own will: in all this we find nothing for a regulated or mixed Monarchy, but against it.

Moreover, whereas the Author of the Treatise of Monarchy affirms it as a prime principle, *That all Monarchies, (except that of the Jews) depend upon humane designment, when the consent of a society of men, and a fundamental contract of a Nation, by original or radical constitution confers power*; He must know that *Arist.* searching into the original of Government, shews himself in this point a better Divine than our Author; and as if he had studied the Book of *Genesis*, teacheth, That Monarchies fetch their Pedigree from the right of Fathers, and not from the gift or contract of people; his words may thus be Englished. *At the first, Cities were Governed by Kings, and so even to this day are Nations also: for such as were under Kingly Government did come together; for every House is governed by a King, who is the eldest; and so also Colonies are governed for kindred sake. And immediately before, he tells us, That the first society made of many Houses is a Village, which naturally seems to be a Colony of a House, which some call foster-brethren, or Children, and Childrens Children.*

So

So in conclusion we have gained *Aristotles* judgment in three main and essential points.

1. *A King according to Law makes no kind of Government.*

2. *A King must rule according to his own will.*

3. *The Original of Kings, is from the right of Fatherhood.*

What *Aristotles* judgment was two thousand years since, is agreeable to the Doctrine of the great modern Politician *Bodin*: Hear him touching limited Monarchy: *Unto Majesty or Sovereignty (saith he) belongeth an absolute power, not subject to any Law — Chief power given unto a Prince with condition, is not properly Sovereignty, or power absolute, except such conditions annexed to the Sovereignty, be directly comprehended within the Laws of God and Nature. — Albeit by the sufferance of the King of England, controversies between the King and his people are sometimes determined by the high Court of Parliament, and sometimes by the Lord Chief Justice of England; yet all the Estates remain in full subjection to the King, who is no ways bound to follow their advice, neither to consent to their requests. — It is certain, that the Laws, Priviledges, and Grants of Princes, have no force but during their life, if they be not ratified by the express consent, or by sufferance of the Prince following, especially Priviledges. — Much less should a Prince be bound unto the Laws he maketh himself; for a man may well receive a Law from another man, but impossible it is in nature for to give a Law unto himself, no more than it is to command a mans self in a matter depending of his own will. The Law saith, Nulla obligatio consistere potest, quæ à voluntate promittentis statum capit. The Sovereign Prince may derogate unto*
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the Laws that he hath promised and sworn to keep, if the equity thereof be ceased; and that of himself, without the consent of his Subjects. — The Majesty of a true Sovereign Prince is to be known, when the Estates of all the people assembled, in all humility present their requests and supplications to their Prince, without having power in any thing, to command, determine, or give voice, but that that which it pleaseth the King to like or dislike, to command or bid, is holden for Law: wherein they which have written of the duty of Magistrates have deceived themselves, in maintaining that the power of the people is greater than the Prince; a thing which causeth oft true Subjects to revolt from their obedience to their Prince, and ministreth matter of great troubles in Common-wealths; of which their opinion there is neither reason nor ground: for if the King be subject unto the Assemblies and Decrees of the people, he should neither be King nor Sovereign, and the Common-wealth neither Realm nor Monarchy, but a meer Aristocracie. — So we see the principal point of Sovereign Majesty, and absolute power, to consist principally in giving Laws unto the Subjects in general without their consent. Bodin de Rep. l. 1. c. 8.

To confound the state of Monarchy with the Popular or Aristocratical estate, is a thing impossible, and in effect incompatible, and such as cannot be imagined: for Sovereignty being of it self indivisible, how can it at one and the same time be divided betwixt one Prince, the Nobility, and the people in common? The first mark of Sovereign Majesty, is to be of power to give Laws, and to command over them unto the Subjects; and who should those Subjects be, that should yield their obedience to the Law, if they should have also power to make the Laws? who should he be that could give the Law?
being

being himself constrained to receive it of them, unto whom himself gave it? so that, of necessity we must conclude, That as no one in particular hath the power to make the Law in such a State, that then the State must needs be a State popular.—Never any Commonwealth hath been made of an Aristocracy and popular Estate, much less of the three Estates of a Commonwealth.—Such States wherein the rights of Sovereignty are divided, are not rightly to be called Commonwealths, but rather the corruption of Commonwealths, as Herodotus has most briefly but truly written.—Commonwealths which change their state, the Sovereign right and power of them being divided, find no rest from Civil wars and broils, till they again recover some one of the three Forms, and the Sovereignty be wholly in one of the states or other. — Where the rights of the Sovereignty are divided betwixt the Prince and his Subjects, in that confusion of state there is still endless stirs and quarrels for the superiority, until that some one, some few, or all together, have got the Sovereignty. Id. lib. 2. c. 1.

This Judgment of Bodin's touching Limited and Mixed Monarchy, is not according to the mind of our Author, nor yet of the Observator, who useth the strength of his Wit to overthrow Absolute and Arbitrary Government in this Kingdom; and yet in the main body of his discourse, lets fall such Truths from his pen, as give a deadly wound to the Cause he pleads for, if they be indifferently weighed and considered. I will not pick a line or two here and there to wrest against him, but will present a whole Page of his Book, or more together, that so we may have an entire prospect upon the Observators mind: *Without society* (saith the

Observator) men could not live; without Laws men could not be sociable; and without Authority somewhere to judge according to Law, Law was vain: It was soon therefore provided, that Laws according to the dictate of Reason, should be ratified by common consent; when it afterward appeared, that man was yet subject to unnatural destruction, by the Tyranny of entrusted Magistrates, a mischief almost as fatal, as to be without all Magistracy. How to provide a wholesome remedy therefore, was not so easie to be invented: it was not difficult to invent Laws for the limiting of Supream Governours; but to invent how those Laws should be executed, or by whom interpreted, was almost impossible, Nam quis Custodiet ipsos Custodes, to place a Superiour above a Supream, was held unnatural; yet what a lifeless thing would Law be without any Judge to determine and force it? If it be agreed upon, that limits should be prefixed to Princes and Judges to decree according to those limits, yet another inconvenience will presently affront us: for we cannot restrain Princes too far, but we shall disable them from some good: long it was ere the world could extricate it self out of all these extremities, or find out an orderly means whereby to avoid the danger of unbounded Prerogative on this hand, and to excessive liberty on the other; and scarce has long experience yet fully satisfied the minds of all men in it. In the Infancy of the world, when man was not so artificial and obdurate in cruelty and oppression as now, and Policy most rude, most Nations did choose rather to subject themselves to the meer discretion of their Lords, than rely upon any limits; and so be ruled by Arbitrary Edicts, than written Statutes. But since Tyranny being more exquisite, and Policy more perfect, especially where Learning and Religion flourish,

few

few Nations will endure the thraldome which usually accompanies unbounded and unconditionate Royalty; Yet long it was ere the bounds and conditions of Supream Lords was so wisely determined, or quietly conserved as now they are: for at first, when as Ephori, Tribuni, Curatores, &c. were erected to poise against the scale of Sovereignty, much blood was shed about them, and States were put into new broils by them, and some places the remedy proved worse than the disease. In all great distresses, the body of the people were ever constrained to rise, and by force of the major party to put an end to all intestine strifes, and make a redress of all publick grievances: But many times calamities grew to a strange height, before so cumbersome a body could be raised; and when it was raised, the motions of it were so distracted and irregular, that after much spoil and effusion of blood, sometimes only one Tyranny was exchanged for another, till some was invented to regulate the motions of the peoples moliminous body. I think Arbitrary rule was most safe for the World: but Now, since most Countries have found an art and peaceable order for publick Assemblies, whereby the people may assume its own power to do it self right, without disturbance to it self or injury to Princes; he is very unjust that will oppose this art or order. That Princes may not be Now beyond all limits and Laws, nor yet to be tyed upon those limits by any private parties; the whole Community, in its underived Majesty, shall convene to do justice; and that the Convention may not be without intelligence, certain times, and places, and forms, shall be appointed for its reglement; and that the vastness of its own bulk may not breed confusion, by vertue of election and representation, a few shall act for many, the wise shall consent for the simple,

the vertue of all shall redound to some, and the prudence of some shall redound to all; and surely as this admirably-composed Court, which is now called a Parliament, is more regularly and orderly formed, than when it was called mickle Synod of Wittena-gemot, or when this real body of the people did throng together at it: so it is not yet perhaps without some defects, which by art and policy might receive farther amendment: some divisions have sprung up of late between both Houses, and some between the King and both Houses, by reason of incertainty of Jurisdiction; and some Lawyers doubt how far the Parliament is able to create new forms and presidents, and has a Jurisdiction over it self; all these doubts would be solemnly solved: but in the first place, the true priviledges of Parliament belonging not only to the being and efficacy of it, but to the honour and complement of it, would be clearly declared: for the very naming of priviledges of Parliament, as if they were chimera's to the ignorant sort, and utterly unknown unto the Learned, hath been entertained with scorn since the beginning of this Parliament.

In this large passage taken out of the Observator which concerns the Original of all Government, two notable Propositions may be principally observed.

First, our Observator confesseth arbitrary or absolute government to be the first, and the safest government for the world.

Secondly, he acknowledgeth that the Jurisdiction is uncertain, and the priviledges not clearly declared of limited Monarchy.

These two evident truths delivered by him, he labours mainly to disguise. He seems to insinuate that Arbitrary Government was but in the infancy of the

the World, for so he terms it ; but if we enquire of him, how long he will have this infancy of the world to last, he grants it continued above three thousand years, which is an unreasonable time for the world to continue under-age : for the first opposers he doth finde of Arbitrary power, were the *Ephori, Tribuni, Curatores, &c.* The *Ephori* were above three thousand years after the Creation, and the *Tribuni* were later ; as for his *Curatores*, I know not whom he means, except the *Master of the Court of Wards*, I cannot English the word *Curator* better. I do not believe that he can shew that any *Curatores* or *& cetera's* which he mentions were so antient as the *Ephori*. As for the *Tribuni*, he mistakes much if he thinks they were erected to limit and bound Monarchy; for the State of *Rome* was at the least *Aristocratical* (as they call it) *if not popular*, when *Tribunes* of the people were first hatched. And for the *Ephori*, their power did not limit or regulate Monarchy, but quite take it away ; for a *Lacedemonian King in the judgment of Aristotle was no King indeed, but in name onely, as Generalissimo of an Army* ; and the best Politicians reckon the *Spartan Commonwealth* to have been *Aristocratical*, and not *Monarchical* ; and if a limited Monarchy cannot be found in *Lacedemon*, I doubt our *Observator* will hardly find it any where else in the whole World ; and in substance he confesseth as much, when he saith, *Now most Countries have found out an art and peaceable order for publick Assemblies* ; as if it were a thing but new done, and not before ; for so the word *Now* doth import.

The *Observator* in confessing the *Jurisdiction* to be uncertain, and the *priviledges* undetermined of that

Court that should bound and limit Monarchy, doth in effect acknowledge there is no such Court at all: for every Court consists of Jurisdictions and Priviledges; it is these two that create a Court, and are the essentials of it: If the admirably composed Court of Parliament have some defects which may receive amendment, as he saith, and if those defects be such as cause divisions both between the Houses, and between the King and both Houses, and these divisions be about so main a matter as Jurisdictions and Priviledges, and power to create new Priviledges, all which are the Fundamentals of every Court, (for until they be agreed upon, the act of every Court may not onely be uncertain, but invalid, and cause of tumults and sedition:) And if all these doubts and divisions have need to be solemnly solved, as our Observator confesseth: Then he hath no reason at all to say, that Now the conditions of Supream Lords are wisely determined and quietly conserved, or that Now most Countries have found out an art, and peaceable order for publick affairs, whereby the people may resume its own power to do it self right without injury unto Princes: for how can the underived Majesty of the people by assuming its own power, tell how to do her self right, or how to avoid doing injury to the Prince, if her Jurisdiction be uncertain, and Priviledges undetermined?

He tells us *Now most Countries have found an art, and peaceable order for publick Assemblies: and to the intent that Princes may not be Now beyond all limits and Laws, the whole community in its underived Majesty shall convene to do Justice.* But he doth not name so much as one Country or Kingdome that hath found out this art, where the whole

whole Community in its underived Majesty did ever convene to do Justice. I challenge him, or any other for him, to name but one Kingdome that hath either *Now* or heretofore found out this art or peaceable order. We do hear a great rumor in this age, of moderated and limited Kings; *Poland, Sweden, and Denmark*, are talked of for such; and in these Kingdomes, or nowhere, is such a moderated Government, as our *Observer* means, to be found. A little enquiry would be made into the manner of the Government of these Kingdoms: for these Northern people, as *Bodin* observeth, *breath after liberty*.

First for *Poland*, *Boterus* saith, that the Government of it is elective altogether, and representeth rather an *Aristocracie* than a Kingdome: the Nobility, who have great authority in the Diets, chusing the King, and limiting His Authority, making His Sovereignty but a slavish Royalty: these diminutions of Regality began first by default of King *Lewis*, and *Jagello*, who to gain the succession in the Kingdom contrary to the Laws, one for his daughter, and the other for his son, departed with many of his Royalties and Prerogatives, to buy the voices of the Nobility. The French Author of the book called *the Estates of the world*, doth inform us that the Princes Authority was more free, not being subject to any Laws, and having absolute Power, not onely of their estates, but also of life and death. Since Christian Religion was received, it began to be moderated, first by holy admonitions of the Bishops and Clergy, and then by services of the Nobility in war: Religious Princes gave many Honours, and many liberties to the Clergy and Nobility, and quit much of their Rights, the
which

which their successors have continued. The superiour dignity is reduced to two degrees, that is, the Palatinate and the Chastelleine, for that Kings in former times did by little and little call these men to publike consultations, notwithstanding that they had absolute power to do all things of themselves, to command, dispose, recompence, and punish, of their own motions: since they have ordained that these Dignities should make the body of a Senate, the King doth not challenge much right and power over His Nobility, nor over their estates, neither hath he any over the Clergy. And though the Kings Authority depends on the Nobility for His election, yet in many things it is absolute after He is chosen: He appoints the Diets at what time and place He pleaseth; He chooseth Lay-Councillors, and nominates the Bishops, and whom He will have to be His Privy Council: He is absolute disposer of the Revenues of the Crown: He is absolute establisher of the Decrees of the Diets: It is in His power to advance and reward whom he pleaseth. He is Lord immediate of His Subjects, but not of His Nobility: He is Sovereign Judge of his Nobility in criminal causes. The power of the Nobility daily increaseth, for that in respect of the Kings election, they neither have Law, rule, nor form to do it, neither by writing nor tradition. As the King governs His Subjects which are immediately His, with absolute Authority; so the Nobility dispose immediately of their vassals, over whom every one hath more than a Regal power, so as they intreat them like slaves. There be certain men in Poland who are called EARTHLY MESSENGERS or Nuntio's, they are as it were Agents of Jurisdictions or Circles of the Nobility: these have a certain Authority, and, as Boterus

terus saith, in the time of their Diets these men assemble in a place neer to the Senate-House, where they chuse two Marshals, by whom (but with a Tribune-like authority) they signifie unto the Council what their requests are. Not long since, their authority and reputation grew so mightily, that they now carry themselves as Heads and Governours, rather than officers and ministers of the publick decrees of the State: One of the Council refused his Senators place, to become one of these officers. Every Palatine, the King requiring it, calls together all the Nobility of His Palatinate; where having propounded unto them the matters whereon they are to treat, and their will being known, they chuse four or six out of the company of the EARTHLY MESSENGERS; these deputies meet and make one body, which they call the order of Knights.

This being of late years the manner and order of the government of Poland, it is not possible for the *Observer* to finde among them that the whole Community in its underived Majesty doth ever convene to do Justice: nor any election or representation of the Community, or that the people assume its own power to do it self right. The EARTHLY MESSENGERS, though they may be thought to represent the Commons, and of late take much upon them, yet they are elected and chosen by the Nobility, as their agents and officers. The Community are either vassals to the King, or to the Nobility, and enjoy as little freedom or liberty as any Nation. But it may be said perhaps, that though the Community do not limit the King, yet the Nobility do, and so he is a limited Monarchy. The Answer is, that in truth, though
the

the Nobility at the chusing of their King do limit his power, and do give him an Oath; yet afterwards they have always a desire to please him, and to second his will; and this they are forced to do, to avoid discord: for by reason of their great power, they are subject to great dissensions, not onely among themselves, but between them and the order of Knights, which are the *Earthly Messengers*: yea, the Provinces are at discord one with another: and as for Religion, the diversity of Sects in *Poland* breed perpetual jars and hatred among the people, there being as many Sects as in *Amsterdam* it self, or any popular government can desire. The danger of sedition is the cause, that though the Crown depends on the election of the Nobility; yet they have never rejected the Kings successour, or transferred the Realm to any other family, but once, when deposing *Ladislaus* for his idleness (whom yet afterward they restored) they elected *Wencelaus* King of *Bohemia*. But if the Nobility do agree to hold their King to his conditions, which is, not to conclude any thing but by the advice of his Council of Nobles, nor to choose any wife without their leaves, then it must be said to be a Common-weal, not a Royalty; and the King but onely the mouth of the Kingdom, or as *Queen Christina* complained, that *Her Husband was but the shadow of a Sovereign*.

Next, if it be considered how the Nobility of *Poland* came to this great power; it was not by any original contract, or popular convention: for it is said *they have neither Law, Rule, nor Form written or unwritten, for the election of their King*; they may thank the Bishops and Clergy: for by their holy ad-

admonitions and advice, good and Religious Princes, to shew their piety, were first brought to give much of their Rights and Priviledges to their Subjects, devout Kings were meerly cheated of some of their Royalties. What power soever general Assemblies of the Estates claim or exercise over and above the bare naked act of Councelling, they were first beholding to the Popish Clergy for it: it is they first brought Parliaments into request and power: I cannot finde in any Kingdom, but onely where Popery hath been, that Parliaments have been of reputation; and in the greatest times of Superstition they are first mentioned.

As for the Kingdom of *Denmarke*, I read that the Senators, who are all chosen out of the Nobility, and seldom exceed the number of 28, with the chief of the Realm, do chuse their King. They have always in a manner set the Kings eldest Son upon the Royal Throne. The Nobility of *Denmarke* withstood the Coronation of *Frederick* 1559, till he sware not to put any Noble-man to death until he were judged of the Senate; and that all Noble-men should have power of life and death over their Subjects without appeal; and the King to give no Office without consent of the Council. There is a Chancelour of the Realm, before whom they do appeal from all the Provinces and Islands, and from him to the King himself. I hear of nothing in this Kingdom that tends to Popularity; no Assembly of the Commons, no elections, or representation of them.

Sweden is governed by a King heretofore elective, but now made hereditary in *Gustavus* time: it is divided into Provinces: an appeal lieth from the

Vicount of every territory to a Sovereign Judge called a *Lamen*; from the *Lamens*, to the Kings Councel; and from this Councel, to the King himself.

Now let the *Observer* bethink himself, whether all, or any of these three Countries have found out any art at all whereby the *people or community may assume its own power*: if neither of these Kingdoms have, most Countries have not, nay none have. The people or Community in these three Realms are as absolute vassals as any in the world; the regulating power, if any be, is in the Nobility: Nor is it such in the Nobility as it makes shew for. The election of Kings is rather a Formality, than any real power: for they dare hardly chuse any but the Heir, or one of the blood Royal: if they should chuse one among the Nobility, it would prove very factious; if a stranger, odious, neither safe. For the Government, though the Kings be sworn to raign according to the Laws, and are not to do any thing without the consent of their Councel in publick affairs: yet in regard they have power both to advance and reward whom they please, the Nobility and Senators do comply with their Kings. And *Boterus* concludes of the Kings of Poland, who seem to be most moderated, that *such as is their valour, dexterity, and wisdom, such is their Power, Authority, and Government*. Also *Bodin* saith, that *these three Kingdoms are States changable and uncertain, as the Nobility is stronger than the Prince, or the Prince than the Nobility*; and the people are so far from liberty, that he saith, *Divers particular Lords exact not onely Customs, but Tributes also; which are confirmed and grow stronger, both by long prescription of time, and use of Judgments.* The End.

AN
ADVERTISEMENT
TO THE
JURY-MEN of *ENGLAND*,
Touching
WITCHES.

THE COMMITTEE
ON THE
JUDICIAL
SYSTEM
OF THE
UNITED STATES
OF AMERICA



ADVERTISEMENT

To the JURY-MEN
OF
ENGLAND.

THE late Execution of Witches at the Summer Assises in Kent, occasioned this brief Exercitation, which addresses it self to such as have not deliberately thought upon the great difficulty in discovering, what, or who a Witch is. To have nothing but the publick Faith of the present Age, is none of the best Evidence, unless the universality of elder times do concur with these Doctrines, which ignorance in the times of darkness brought forth, and credulity in these days of light hath continued.

Such as shall not be pleased with this Tractate, are left to their liberty to consider, whether all these Proofs and Presumptions number'd up by Mr. Perkins,
Y for

An Advertisement, &c.

for the Conviction of a Witch, be not all Condemned, or confessed by himself to be insufficient or uncertain.

He brings no less than eighteen signs or proofs, whereby a Witch may be discovered, which are too many to be all true: his seven first he himself confesseth to be insufficient for Conviction of a Witch; His eight next proofs (which he saith men in place have used) he acknowledgeth to be false or insufficient. Thus of his Eighteen proofs, which made a great shew, fifteen of them are cast off by himself; there remains then his sixteenth, which is the Confession of a Witch; yet presently he is forced to yield, That a bare Confession is not a sufficient proof, and so he cometh to his seventeenth proof, which is, two credible witnesses; and he here grants, that the League between the Devil and the Witch is closely made, and the practices of Witches be very secret, that hardly a man can be brought, which upon his own knowledge can aver such things. Therefore at last, when all other proofs fail, he is forced to fly to his eighteenth proof, and tells us, that yet there is a way to come to the knowledge of a Witch, which is, that Satan useth all means to discover a Witch; which how it can be well

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well done, except the Devil be bound over to give in evidence against the Witch, cannot be understood.

And as Mr. Perkins weakens and discredits all his own proofs, so he doth the like for all those of King James, who, as I remember, hath but Three Arguments for the discovery of a Witch. First, the secret Mark of a Witch, of which Mr. Perkins saith, it hath no power by Gods Ordinance. Secondly, The discovery by a fellow-Witch; this Mr. Perkins by no means will allow to be a good proof. Thirdly, the swimming of a Witch, who is to be flung cross ways into the water, that is, as Wierus interprets it, when the Thumb of the right Hand is bound to the great Toe of the left Foot, and the Thumb of the left Hand to the great Toe of the right Foot. Against this Tryal by water, together with a disability in a Witch to shed Tears, (which King James mentions) Delrio and Mr. Perkins both argue; for it seems they both write after King James, who put forth his Book of Dæmonologie in his youth, being in Scotland, about his age of thirty years.

It concerns the people of this Nation to be more diligently instructed in the Doctrine of Witch-craft, than those of For-

An Advertisement, &c.

raign Countries , because here they are tyed to a stricter or exacter Rule in giving their sentence than others are : for all of them must agree in their Verdict , which in a case of extream difficulty is very dangerous ; and it is a sad thing for men to be reduced to that extremity , that they must hazard their Consciences or their Lives.

A DIFFERENCE

BETWEEN

An *English* and *Hebrew* WITCH.

THE Point in Question is briefly this ;
Whether such a Witch as is Condemned
by the Laws and Statutes of this Land ,
be one and the same with the Witch for-
bidden by the Law of *Moses*.

The Witch Condemned by our Statute-law is ,
1 *Jacob. Cap. 12.*

One that shall use, practice, or exercise
any Invocation or Conjuratiou of any
evil or wicked spirit, or consult, cove-
nant with, entertain or employ, feed or
reward any evil or wicked spirit, to or for
any intent or purpose ; or take up any
dead man, woman, or child, out of his,
her, or their grave, or any other place,
where the dead body resteth ; or the skin,
bone, or other part of any dead person, to
be employed or used in any manner of
Witchcraft, Sorcery, Charm or Enchant-
ment ; or shall use, practice, or exercise
any Witchcraft, Enchantment, Charm,

or Sorcery, whereby any person shall be killed, destroyed, wasted, consumed, pined, or lamed in his or her body, or any part thereof: such Offenders duely and lawfully Convicted and Attainted, shall suffer Death.

If any person shall take upon him by Witchcraft, Inchantment, Charm or Sorcery, to tell or declare in what place any Treasure of Gold or Silver should or might be found or had in the Earth, or other secret places, or where Goods, or things lost or stoln should be found or become: Or to the intent to provoke any person to unlawful love, or whereby any Cattle or Goods of any person shall be destroyed, wasted, or impaired; or to destroy or hurt any person, in his, or her body, though the same be not effected, &c. a years Imprisonment, and Pillory, &c. and the second Conviction Death.

In this Statute, these Points are observable.

1. That this Statute was first framed in 5. Eliz. and onely the penalties here a little altered, and the last clause concerning provoking of persons to love, and destroying of Cattle and Goods, &c. is so changed, that I cannot well make sence of it, except it be rectified according to the words of the former Statute which stands repealed.

2. Although the Statute runs altogether in the disjunctive *Or*, and so makes every single crime capital, yet the Judges usually by a favourable interpretation

terpretation, take the disjunctive *Or*, for the copulative *And*; and therefore ordinarily they condemn none for Witches, unless they be charged with the Murdering of some person.

3. This Statute pre-supposeth that every one knows what a Conjuror, a Witch, an Inchanter, a Charmer, and Sorcerer is, as being to be learned best of Divines; and therefore it hath not described or distinguished between them: and yet the Law is very just in requiring *a due and lawful conviction*.

The definition of Witch-craft.

FOR the better discovery of the qualities of these crimes, I shall spend some discourse upon the Definition of those Arts by Divines: for both those of the Reformed Churches, as well as these of the Roman, in a manner, agree in their definition of the sin of Witch-craft. I shall instance in two late Writers, *viz.* Mr. *William Perkins* in his Discourse of Witch-craft, and in *Martin Delrio*, a Jesuit of Lorraine, in his Book of *Magical Disquisitions*.

Our English word *Witch*, is derived from the Dutch word *Wiebelen*, or *Wijbelen*, which doth properly signifie *whinying* or *neying* like a Horse, and doth also signifie to foretel or prophecy; and *Weicheler* signifies a *Southsayer*, for that the Germans, from whom our Ancestors the Saxons descended, usually and principally did, as *Tacitus* tells us, *divine and fore-tell things to come, by the whinying and neying of their Horses*. *Hinnitu & fremitu* are his words.

For the Definition Mr. Perkins saith, Cap. I. *Witch-craft is an Art serving for the work-*

ing of wonders, by the assistance of the Devil, so far as God shall permit.

Delrio defineth it to be an *Art*, which by
 Lib. 1. the power of a Contract entred into with the
 c. 2. Devil, some wonders are wrought which pass
 the common understanding of men. *Ars qua
 vi pacti cum Demonibus initi mira quædam communem
 hominum captum superantia efficiuntur.*

In these two Definitions, some Points are worth the noting.

1. They both agree in the main Foundation, which is a Contract with the Devil, and therefore Mr. Perkins thought it most necessary, that this main point should be proved; to which purpose he promisseth to define a Witch, by opening
 Cap. 2. the nature of Witch-craft, as it is delivered in the old and new Testament; and yet after
 Cap. 2. he confesseth a manifest Covenant is not so fully set down in Scripture: And out of the New Testament he offers no proof at all, though he promised it; nevertheless, he resolves us that a Covenant is a most evident and certain truth, that may not be called in question.

For proof of a Covenant, he produceth onely one Text out of the old Testament; neither doth he say, that the Text proveth a Contract with the Devil, but onely that it *intimateth* so much: Thus at the first he falls from a proof to an intimation onely. The Text is, *Psal. 58. v. 5.* of
 Cap. 2. which his words are these: *Howsoever the common Translation runneth in other terms, yet the words are properly to be read thus: Which beareth not the voice of the mutterer joyning Societies cunningly — the main Foundation of the Charm, Societies*

or Confederacies cunningly made, not between man and man, but, as the words import, between the Enchanter and the Devil, Deut. 18. 11.

Answer. Though there be neither mention of Spirit or Devil in this Psalm, yet Mr. Perkins would have us believe that there can be no conjoyning or consociating but with the Devil : but Mr. Ainsworth, as great a Rabby as Mr. Perkins, finds other Interpretations of this Text ; and though he mentions fellowship with the Devil, yet he puts it in the third and last place, as the newest and latest Interpretation : for he teacheth us, that the Enchanter had his title both in Psalm 58. and in Deut. 18. either because he associates Serpents, making them tame and familiar that they hurt not, or because such persons use to bind and tie bonds, or things about the body, to heal or hurt by Sorcery. Also he teacheth us, that a Charmer doth joyn or speak words of a strange language, and without sence, &c.

Delrio it seems puts no confidence in this Text of Mr. Perkins, for he doth not cite it to prove a Contract ; yet he hath also one Text of his own to that purpose, it is Esay 28. 15. where it is said, *We have made a Covenant with Death, and with Hell we are at an agreement ;* Qu. 4. *Percussimus fœdus cum morte, & cum inferno fecimus pactum :* and Delrio tells us, that *Tho. Aquinas* did apply this Text to Witches, *magis satis probabili interpretatione.*

Answer. If this Text be considered, it proves nothing at all : for it doth not charge the proud and drunken Ephraimites, of whom it is spoken, that they had made an agreement with Hell, but it is onely a false brag of their own, to justify their
wick-

wickedness by a lye : for it is not possible to make a Covenant with Death, which in it self is nothing but a meer not being ; and whereas it is called an agreement with Hell, it may be translated as well, if not better in this place, an agreement with the Grave ; and so the Interlineary Bible hath it ; and Tremelius and Junius render it, *Pepigimus fœdus cum morte, & cum sepulchro egimus cautum* ; which they term a *Thraſonical hyperbole* : and Deodatus his Italian Bible hath, *Habbiamo fatto lega col ſepolcro* ; ſo likewise the Spaniſh Bible translates it, *Concierto tenemos hecho con la muerte, è con la ſepultura hazimos acuerdo*.

It may be wondered that neither Mr. Perkins nor the Jeſuit have any other or better Texts to prove this Contract between the Witch and the Devil. But the truth is, it is very little that either of them ſay of this great point, but paſs it over perfunctorily. Perhaps it may be thought that King James hath ſaid, or brought more and better proofs in this point ; but I do not finde that he doth meddle with it at all, but takes it for granted that if there be Witches, there muſt needs be a Covenant, and ſo leaves it without further proof.

A ſecond note is, that the agreement between the Witch and the Devil they call a Covenant, and yet neither of the parties are any way bound to perform their part ; and the Devil, without doubt, notwithstanding all his craft, hath far the worſt part of the bargain. The bargain
 Cap. 12. runs thus in Mr. P. the *Witch as a ſlave binds himſelf by Vow to believe in the Devil, and to give him either Body, or Soul, or both, under*

der his hand-writing, or some part of his Blood. The Devil promiseth to be ready at his vassals command to appear in the likeness of any Creature, to consult, and to aid him for the procuring of Pleasure, Honour, Wealth, or Preferment; to go for him, to carry him any whither, and do any command. Whereby we see the Devil is not to have benefit of his bargain till the Death of the Witch; in the mean time he is to appear always at the Witches command, to go for him, to carry him any whither, and to do any command: which argues the Devil to be the Witches slave, and not the Witch the Devils.

Though it be true which *Delrio* affirmeth, that the Devil is at liberty to perform or break his compact, for that no man can compel him to keep his promise; yet on the other side, it is as possible for the Witch to frustrate the Devils Contract, if he or she have so much grace as to repent; the which there may be good cause to do, if the Devil be found not to perform his promise: Besides, a Witch may many times require that to be done by the Devil, which God permits not the Devil to do; thus against his will the Devil may lose his credit, and give occasion of repentance, though he endeavour to the utmost of his power to bring to pass whatsoever he hath promised; and so fail of the benefit of his bargain, though he have the hand-writing, or some part of the blood of the Witch for his security, or the solemnity before witnesses, as *Delrio* imagineth.

I am certain they will not say that Witch-craft is like the sin against the Holy Ghost, unpardonable,

ble: for Mr. Perkins confesseth the contrary, and Delrio denies it not; for he allows the Lib. 5. *Sacrament of the Eucharist* to be administered to a condemned Witch, with Sect. 18. this limitation, that there may be about four hours space between the Communion, and the Execution, in which time it may be probably thought that the *Sacramental Species* (as they call it) may be consumed.

3. Delrio in his second Book, and fourth Question, gives this Rule, which he saith is common to all Contracts with the Devil, *That first they must deny the Faith, and Christianity, and Obedience to God, and reject the patronage of the Virgin Mary, and revile her.* To the same purpose Mr. Perkins affirms that *Witches renounce God and their Baptism.* But if this be common to all Contracts with the Devil, it will follow that none can be Witches but such as have first been Christians, nay and *Roman Catholiques*, if Delrio say true; for who else can renounce the patronage of the Virgin Mary? And what shall be said then of all those Idolatrous Nations of *Lapland, Finland*, and of divers parts of *Africa*, and many other Heathenish Nations, which our Travellers report to be full of Witches? and indeed, what need or benefit can the Devil gain by contracting with those Idolaters, who are surer his own, than any Covenant can make them?

4. Whereas it is said that *Witchcraft is an Art working wonders*, it must be understood that the art must be the Witches Art, and not the Devils, otherwise it is no Witch-craft, but Devils-craft. It is confessed on all hands, that the Witch doth not work the wonder, but the Devil onely.
It

It is a rare Art for a Witch by her Art to be able to do nothing her self, but to command another to practise the Art. In other Arts, Mr. Perkins confesseth *that the Arts Master is able by himself to practise his Art, and to do things belonging thereunto without the help of another; but in this it is otherwise —* Cap.1. Sect.4.
the power of effecting strange works doth not flow from the skill of the Witch, but is derived wholly from Satan. To the same purpose he saith, that the means of working wonders are Charms used as a Watch-word to the Devil to cause him to work wonders: so Cap.4. Sect.1.
 that the Devil is the worker of the wonder, and the Witch but the Counsellour, Perswader, or Commander of it, and onely accessary before the Fact, and the Devil onely principal. Now the difficulty will be, how the accessary can be duely and lawfully convicted and attainted according as our Statute requires, unless the Devil, who is the Principal, be first convicted, or at least outlawed; which cannot be, because the Devil can never be lawfully summoned according to the rules of our Common-law. For further proof that the Devil is the principal in all such wonders, I shall shew it by the testimony of King James, in a case of Murther, which is the most capital crime our Laws look upon. First, he tells us that *the Devil teaches Witches how to make Pictures of Wax and Clay, that by the roasting thereof the persons that they bear the Name of may be continually melted, or dried away by continual sickness — not that any of these means which he teacheth them (except poysons, which are composed of things natural) can of themselves help*
 any

anything to these turns they are imployed in.
 Lib.2. Secondly, King *Jame* affirms that *Witches*
 Cap.5. can bewitch, and take the life of Men or
 Women by roasting of the Pictures, which is
 very possible to their Master to perform: for although
 that instrument of Wax have no vertue in the turn
 doing, yet may be not very well, by that same mea-
 sure that his conjured Slave melts that Wax at
 the fire, may be not I say at these same times, sub-
 tilly as a spirit, so weaken and scatter the spirits of
 life of the patient, as may make him on the one part
 for faintness to sweat out the humours of his body; and
 on the other part, for the not concurring of these spirits
 which cause his digestion, so debilitate his stomach, that
 his humour radical continually sweating out on the one
 part, and no new good Suck being put in the place
 thereof for lack of digestion on the other, he at last
 shall vanish away even as his Picture will do at the Fire.
 Here we see the Picture of Wax, roasted by the
 Witch, hath no vertue in the Murdering, but
 the Devil onely. It is necessary in the first place
 that it be duly proved that the party Murther'd
 be Murthered by the Devil: for it is a shame to
 bely the Devil; and it is not possible to be proved,
 if it be Subtiley done as a Spirit.

5. Our Definers of Witch-craft dispute much,
 whether the Devil can work a Miracle: they re-
 solve he can do a *Wonder*, but not a *Miracle*;
Mirum, but not *Miraculum*. A Miracle, saith Mr.
Perkins, is that which is above or against nature sim-
 ply; a *Wonder* is that which proceeds not from the ordi-
 nary course of nature. *Delrio* will have a Miracle to
 be *præter*, or *supra naturæ create vires*: both seem
 to agree in this, that he had need be an admirable
 or

or profound Philosopher, that can distinguish between a Wonder and a Miracle; it would pose *Aristotle* himself, to tell us every thing that can be done by the power of Nature, and what things cannot; for there be daily many things found out, and daily more may be, which our Fore-fathers never knew to be possible in Nature. Those that were converted by the Miracles of our Saviour, never stayed to enquire of their Philosophers what the power of Nature was; it was sufficient to them, when they saw things done, the like whereof they had neither seen nor heard of, to believe them to be Miracles.

6. It is commonly believed and affirmed by Mr. *Perkins*, that the cause which moves the Devil to bargain with a Witch, is a desire to obtain thereby the Soul and Body of the Witch. But I cannot see how this can agree with another Doctrine of his, where he saith, *The Precepts of Witch-craft are not delivered indifferently to every Man, but to his own subjects the wicked; and not to them all, but to special and tried ones, whom he most betrusteth with his secrets, as being the fittest to to serve his turn, both in respect of their willingness to learn and practise, as also for their ability to become Instruments of the mischief he intendeth to others.* All this argues, the end of the Devils rules of Witch-craft is not to gain Novices for new Subjects, but to make use of old ones to serve his turn.

7. The last clause of Mr. *Perkins* definition is, that *Witch-craft doth work wonders so far as God shall permit.* I should here desire to have known whether Mr. *Perkins* had thought that God doth permit farther power to the Devil upon his contracting with

with the Witch, than he had before the Contract: for if the Devil had the same permission before the Contract, then he doth no more mischief upon the Contract, than he would have gladly done before, seeing, as Mr. Perkins saith, *The*

Devils malice towards all Men is of so high a degree, that he cannot endure they should enjoy the World, or the benefits of this life (if it were possible) so much as one hour. But yet afterward I finde Master Perkins is more favourable to the Devil, where he writes, *that if the Devil were not stirred up and provoked by the Witch, he would never do so much hurt as he doth.*

Of the Discerning and Discovery of a Witch.

Cap.7. **A** Magistrate, saith Mr. Perkins, may
Sect. 1. not take upon him to examine whom
and how he willet of any Crime, nor to proceed upon slight causes, or to shew his Authority, or upon sinister respects, or to revenge his malice, or to bring parties into danger and suspicion; but he must proceed upon special presumptions.

Cap.7. He calls those presumptions, which do at
Sect.2. least probably and conjecturally note one to be
a Witch, and are certain signs whereby the Witch may be discovered. I cannot but wonder that Mr. Perkins should say, that presumptions do at least probably and conjecturally note, and are certain signs to discover a Witch; when he confesseth, that though presumptions give occasion to examine, yet they are no sufficient causes of conviction: and though presumptions be never so strong, yet they are not proofs sufficient for Conviction, but onely for Exa-
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mination. Therefore no credit is to be given to those presumptions he reckons up. 1. For common fame, it falls out many times, saith he, *that the innocent may be suspected, and some of the better sort notoriously defamed.* 2. The testimony of a fellow-Witch, he confesseth, doth not probably note one to be a Witch. The like may be said of his third and fourth presumption, *if after cursing, or quarrelling, or threatening, there follow present mischief.* And the fifth presumption is more frivolous, which is, *if the party be the Son or Daughter, or Servant, or Friend, neer neighbour, or old companion of a Witch.* The sixth presumption Mr. Perkins dares not, or is loath to own, but saith, *Some add, if the party suspected have the Devils Mark; and yet he resolves, if such a Mark be descried, whereof no evident reason in nature can be given, the Magistrate may cause such to be examined, or take the matter into his own hands, that the truth may appear; but he doth not teach how the truth may be made to appear.* The last presumption he names, is, *if the party examined be unconstant, or contrary to himself; here he confesseth, a good man may be fearful in a good cause; sometimes by nature, sometimes in regard of the presence of the Judge, or the greatness of the Audience; some may be suddenly taken, and others want that liberty of speech which other men have.*

Touching Examination, Mr. Perkins names two kinds of proceedings, either by simple Question, or by Torture: Torture, when besides the enquiry by words, the Magistrate useth the Rack, or some other violent means to urge Confession; this he saith, *may be lawfully used, howbeit not in every case, but onely upon strong and great presumptions, and when the party is obstinate.* Here it may be noted, that it is not

lawful for any person, but the Judge onely, to allow Torture : suspicious Neighbours may not, of their own heads, use either Threats, Terrors, or Tortures. I know not any one of those presumptions before-cited, to be sufficient to warrant a Magistrate to use Torture ; or whether when the party constantly denies the Fact, it must be counted obstinacy. In case of Treason sometimes, when the main Fact hath been either confessed, or by some infallible proofs manifested, the Magistrate, for a farther discovery of some circumstance of the Time, the Place, and the Persons, or the like, have made use of the Rack : and yet that kind of torture hath not been of antient usage in this Kingdom ; for if my memory fail not, I have read, that the Rack hath been called *the Duke of Exeters Daughter*, and was first used about Hen. 6. days.

From presumptions, Mr. Perkins proceeds to proofs of a Witch ; and here he hath a neat distinction of proofs, *less sufficient*, or *more sufficient* ; by less sufficient he meaneth insufficient, but gives them this mild and strange phrase of less sufficient, that it may not displease such friends (as I conceive) allow those less sufficient proofs for sufficient, though he reckons them for no better than Witch-craft. Those unsufficient sufficient proofs are weaker and worse than his presumptions, which he confesseth are no proofs at all ; yet we must reckon them up. His first less sufficient proof is, *The antient trial by taking red-hot Irons, or putting the hand in hot scalding water* ; this, he saith, *hath been condemned for Diabolical and wicked, as in truth it is : for an innocent man may thereby be condemned, and a rank Witch scape unpunished.* A second insufficient proof is, *Scratching*
of

of the suspected party, and the present recovery there-upon. A third is, the burning the thing bewitched, as a Hog, an Ox, or other Creature, it is imagined a forcible means to cause the Witch to discover her self. A fourth, is the burning the Thatch of the suspected parties House. The fifth less sufficient proof is, the binding of the party hand and foot, and casting cross-ways into the water; if she sinks, she is counted innocent; if she float on the water and sink not, she is taken for a Witch, convicted, and punished. The Germans used this Tryal by cold water; and it was imagined, that the Devil being most light, as participating more of Air than of Water, would hold them up above the water, either by putting himself under the Witch, and lifting her up, as it were with his back, or by uniting himself, and possessing her whole body.

All these less sufficient proofs, saith Mr. Perkins, are so far from being sufficient, that some of them, if not all, are after a sort practices of Witch-craft, having no power by Gods Ordinance. Hereby he condemns point-blank King James's judgment, as favouring of Witchcraft, in allowing of the Tryal of a Witch by swimming as a principal proof. And as I take it, he condemns himself also, except he can find any Ordinance of God, that the having of an incurable and insensible mark or sore, shall be a presumption, or certain sign of a Witch.

A sixth less sufficient proof, is the Testimony of a Wizard, Witch, or cunning man, who is gone or sent unto, and informs that he can shew in a glass the Face of the Witch. This accusation of a Witch by another Witch, Mr. Perkins denies to be sufficient; and he puts this case: If the Devil appear to a grand Ju-

ry, in the likeness of some known man, and offer to take his Oath that the person in question is a Witch, should the Enquest receive his Oath or accusation to condemn the party? He answers, Surely no; and yet that is as much as the Testimony of another Witch, who onely by the help of the Devil revealeth the Witch: if this should be taken for a sufficient proof, the Devil would not leave one good man alive in the world.

This discrediting of the Testimony of a Witch, takes away the other (for he hath but two) of King James main proofs for the discovery of a Witch; for he saith, *Who but Witches can be provers, and so witnesses of the doings of Witches?* and to the same purpose Mr. Perkins himself confesseth, that the Precepts of Witch-craft are not delivered, but to the Devils own Subjects, the wicked.

A seventh less sufficient proof is, when a man in open Court affirms, *such a one fell out with me, and cursed me, threatening I should smart for it in my person or goods; upon these threats, such Evils and Losses presently befel me; this is no sure ground for Conviction,* saith Mr. Perkins, for it pleaseth God many times to lay his Hands upon mens persons and goods, without the procurement of Witches; and yet saith Mr. Perkins, Experience shews, that ignorant people will make strong proofs of such presumptions, whereupon sometimes Jurors do give their Verdict against parties innocent.

The last less sufficient proof is, if a man being sick, upon suspicion will take it on his death, that such a one hath bewitched him, it is of no moment, saith Mr. Perkins; it is but the suspicion of one man for himself, and is of no more force than another mans word against him.

All these proofs, saith Mr. Perkins, which men in place have ordinarily used, be either false or insufficient signs.

At

At the last Mr. Perkins comes to his *more sufficient proofs*, which are in all but two. The confession of the Witch, or the proof of two witnesses. Against the confession of a Witch, Mr. Perkins confesseth, *it is objected, that one may confess against himself an untruth, being urged by force or threatening, or by desire upon some grief to be out of the World; or at least being in trouble, and perswaded it is the best course to save their lives and obtain their liberty, they may upon simplicity be induced to confess that they never did, even against themselves.* The truth of this Allegation Mr. Perkins doth not deny, but grants it, in that his Answer is, *That he doth not say a bare Confession is sufficient, but a Confession after due Examination taken upon pregnant presumptions.* But if a bare confession be not a sufficient proof, a pregnant presumption can never make it such; or if it could, then it would not be a sufficient proof. For the farther weakning of the confession of a suspected Witch, we may remember what Mr. Perkins hath formerly answered, when it was alleadged, *that upon a melancholy humour, many confess of themselves things false and impossible, That they are carried through the Air in a moment, that they pass through key-holes and cleffs of Doors; that they be sometimes turn'd into Cats, Hares, and other Creatures, and such like; all which are meer fables, and things impossible.* Here Mr. Perkins answers, *that when Witches begin to make a League, they are sober and sound in understanding; but after they be once in the League, their reason and understanding may be depraved, memory weakened, and all the powers of their Soul blemished; they*

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are deluded, and so intoxicated, that they will run into a thousand of phantastical imaginations, holding themselves to be transformed into the shapes of other Creatures, to be transported in the Air, to do many strange things which in truth they do not.

Now Mr. Perkins will confess, that the Examination and Confession of a suspected Witch, is always after such time as her Covenant is made; when she is by his Confession deluded, and not fit to give testimony against her self.

His second more sufficient proof (he saith, if the party will not confess, as commonly it falleth out) is two witnesses avouching upon their own knowledge, either that the party accused hath made League with the Devil, or hath done some known practices of Witch-craft, or hath invocated the Devil, or desired his help. But if every man that hath invocated the Devil, or desired his help, must have formerly made a League with him, then whole Nations are every man of them Witches; which I think none will say.

As for the League, and proof of Witchcraft, Mr. Perkins confesseth, Some may say, If these be the onely strong proofs for the Conviction of a Witch, it will be then impossible to put any one to death; because the League with Satan is closely made, and the practices of Witch-craft are also very secret, and hardly can a man be brought, which upon his own knowledge can aver such things. To this Mr. Perkins answer is a confession: that howsoever the ground and practice be secret, and be to many unknown, yet there is a way to come to the knowledge thereof. — Satan endeavoreth the discovery, and useth all means to disclose Witches. This means he speaks of should be in the power of the Judge, or else it is no help for the Discovery of
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a Witch, but onely when the Devil pleaseth. I do not find he proves that it is usual with Satan to endeavour any such Discovery; neither do I see how it is practicable by the Devil: for either he must do it by his own relation or report; which as it cannot be proved he ever did, so it is vain, and to no purpose if he do it; for Mr. Perkins hath discredited the testimony of the Devil, as invalid, and of no force for conviction: or else the Devil must discover it by some second means; and if there had been any such second means usual, Mr. Perkins would have taught us what they are, and not have left us onely to his two more sufficient proofs, which he confesseth are not infallible.

King James tells us, that the Devils first discovering of himself for the gaining of a Witch, is either upon their walking solitarily in the Fields, or else lying pausing in their bed, but always without the company of any other; and at the making of Circles and Conjurations, none of that craft will permit any others to behold; when the Devil and his Subjects are thus close and secret in their actions, it cannot be imagined that he will use all means to discover his most special and trustiest Subjects: and though Mr. Perkins tells us, that by vertue of the Precontract, the Devil is cock-sure of his instruments; yet within a few lines he changeth his note, and saith, *Though he have good hope of them, yet he is not certain of their continuance, because some by the mercy of God have been reclaimed and freed from his Covenant.* Besides, he confesseth, the Devil suffereth some to live long undisclosed, that they may exercise the greater measure of his malice in the world. It re-

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mains, that if the two true proofs of Mr. Perkins, which are the Witches Confession, or sufficient witnesses, fail, *we have not warrant, as he saith, in the word, to put such an one to death.*

I conclude this point in the words of Mr. Perkins; I advise all Jurors, that as they be diligent in the zeal of Gods glory, so they would be careful what they do, and not to condemn any party suspected upon bare presumptions, without sound and sufficient proofs, that they be not guilty through their own rashness, of shedding innocent blood.

Of

Of the Hebrew Witch.

IN *Dent.* 18. The Witch is named with divers other sorts of such as used the like unlawfull Arts; as the Diviner, the Observer of times, an Inchanter, a Charmer, a Consulter with a familiar Spirit, a Wisard, or a Necromancer. The Text addeth, *All that do these things are an abomination to the Lord, and because of these abominations, the Lord thy God doth drive them [the Nations] out from before thee.* If we desire to know what those abominations of the Nations were, we are told in general in the 14. Verse of the same Chapter: *These Nations hearkened unto observers of times, and unto Diviners.* There is no other crime in this Chapter laid to the charge of all, or any of these practisers of such unlawful Arts, but of *lying Prophesies*; and therefore the Text addeth, *The Lord thy God will raise up unto thee a Prophet from the midst of thee, of thy Brethren, like unto me, unto him shall ye hearken, and not to the Diviners, Wisards, Charmers, &c.*

Setting aside the case of *Job* (wherein God gave a special and extraordinary Commission) I do not finde in Scripture that the Devil, or Witch, or any other, had power ordinarily permitted them, either to kill or hurt any man, or to meddle with the Goods of any: for though, for the trial of the hearts of men, God doth permit the Devil ordinarily to tempt them; yet he hath no
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Commiffion to destroy the Lives or Goods of men ; it is little lefs than blasphemy to fay any fuch thing of the admirable providence of God, whereby he preserves all his Creatures.

It was crime fufficient for all thofe practicers of unlawful Arts, to delude the people with false and lying Prophecies, thereby to make them forget to depend upon God, and *to have their Souls turn after fuch as have Familiar Spirits, and after Wifards, to go a whoring after them,* as the Lord faith, *Levit. 20.6.* This fpiritual whoredome is flat Idolatry, in the common phrafe of the Old Testament ; and thofe that be enticers to it, thereby endeavour to destroy the Souls of the People, and are by many degrees more worthy of death, than thofe that onely destroy the Bodies or Goods of men.

If there were a Law that every one fhould be put to Death, or punifhed, that fhould advifedly endeavour to perfwade men that they are skilful in thofe forbidden Arts, or in foretelling of things to come, or that they have contracted with the Devil, and can thereby murther or destroy mens Goods ; I fhould never deny fuch a Law to be moft confonant and agreeing with the Law of *Mofes.*

But becaufe I may be thought by fome a favourer of thefe forbidden Arts, through want of understanding the Scripture about the quality of them ; I have made choice of a Man who is no friend to Witches, and whose learning in this
point

point will not be denied. In his own words I shall set down, what either out of the Hebrew Names of those prohibited Arts, or out of the exposition of the Jewish Doctors can be gathered for the understanding of them.

A Diviner, in Hebrew, a Foreseer, or Prefager, a Foreteller of things to come, as doth a Prophet — The Hebrews take a Diviner to be one that doth things whereby he may foretel things to come, and say, Such a thing shall be, or not be, or say, It is good to do such a thing — The means of Divining; some doing it with Sand, some with Stones, some by lying down on the Ground, some with Iron, some with a Staff — He that asked of a Diviner, is chastised with stripes.

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upon
Dent. 18.

2. *An observer of times, or Soothsayer, an Observer of the Clouds, a Planetary, or an observer of the flying of Fowls, an Augur. As the Diviners were carried much by inward and Spiritual Motions, so these by outward Observations in the Creatures. The Hebrews say, they were such as did set times for the doing of things, saying, Such a day is good, and such a day is naught.*

3. *An Observer of Fortunes, one that curiously searcheth signs of good or evil luck, which are learned by Experience: the Hebrew is, to finde out by Experience; Whereupon the word here used is one that too curiously observeth, and abuseth things that do fall out, as lucky or unlucky*

lucky. The Hebrews describe it thus, as if one should say, Because the morsel of Bread is fallen out of my mouth, or my Staff out of my hand, I will not go to such a place: because a Fox passed by on my right hand, I will not go out of my House this day. Our new Translation renders this word an Inchanter.

4. *A Witch*, a Sorcerer, such as do bewitch the Senses or minds of Men, by changing the forms of things to another hew. The *Hebrew* word for a Witch properly signifies a Jugler, and is derived from a word which signifies *changing or turning*; and *Moses* teacheth, *Exod. 7.* that Witches wrought by Enchantments, that is, *by secret Sleights, Jugglings, Close conveyance, or of Glistering like the flame of Fire, or a Sword, wherewith Mens Eyes were dazzled.*

5. *A Charmer*, or one that conjureth Conjurations; the *Hebrew* signifies *conjoyning or consociating* — The Charmer is said to be he, that speaketh words of a strange Language, and without sense; that if one say so or so unto a Serpent, it cannot hurt him; he that whispereth over a wound, or that readeth over an Infant that it may not be frightened, or layeth the Bible upon a Child that it may sleep.

6. *A Wisard* or cunning Man, in Hebrew named of his knowledge or cunning — The *Hebrews* describe him thus, That he put in his mouth a bone of a Bird, and burned incense, and did other things until he fell down with shame, and spake.

spake with his mouth things that were to come to pass.

7. *A Necromancer*, one that seeketh unto the Dead : of him they say, he made himself hungry, and went and lodged among the Graves, that the dead might come unto him in a Dream, and make known unto him that which he asked of him ; and others there were that clad themselves with Cloaths for that purpose , and spake certain words , and burned Incense , and slept by themselves ; that such a dead person might come and talk with them in a dream.

8. Lastly, *The Consulter with Familiar Spirits*, in Hebrew, a *Consulter with Ob*, applied here to Magicians , who possessed with an evil Spirit, spake with a hollow voice as out of a bottle. — The *Hebrews* explain it thus, That he which had a Familiar Spirit stood and burned Incense , and held a rod of Mirtle-tree in his hand, and waved it , and spake certain words in secret , until he that enquired did hear one speak unto him , and answer him touching that he enquired, with words from under the Earth, with a very low voice, &c. Likewise, one took a dead mans Skull and burnt Incense thereto, and enchanted thereby till he heard a very low voice, &c. This Text in our English Translation being expounded a Familiar Spirit , and seconded by the History of the Woman of *Endor*, may seem a strong evidence that the Devil covenanted with Witches : but if all be granted that can be desired, that this Familiar Spirit signifies a Devil , yet it comes not home to prove the main point ; for it is no proof that

that the Familiar Spirit enter'd upon Covenant, or had or could give power to others to kill the persons, or destroy the Goods of others. King *James* confesseth, *the Devil can make some to be possessed, and so become very Demoniacues; and that she who had the spirit of Python in Acts 16. whereby she conquered such gain to her Master; that Spirit was not of her own raising or commanding, as she pleased to appoint, but spake by her Tongue as well privately as publickly.* We do not find the *Pythonesse* condemned or reprov'd, but the unclean Spirit commanded in the Name of *Jesus Christ* to come out of her. *The Child which was too young to make a Covenant with the Devil, was possessed with a dumb and deaf Spirit, and the Devil charged to come out, and enter no more into him, Mark 9. A Daughter of Abraham (that is, of the Faith of Abraham) was troubled with a spirit of infirmity eighteen years, and bowed together that she could not lift her self up, Luke 13. 10, 16.*

It is observable, that in *Deut. 18.* where all the unlawful Arts are reckoned up, and most fully prohibited, the crime of them is charged upon the practisers of those Arts; but the crime of having a Familiar Spirit is not there condemned, but the consulter of a Familiar Spirit; so in *Levit. 19. 31.* the prohibition is, *Regard not them that have Familiar Spirits;* and so in *Levit. 20. 6.* *The Soul that turneth after such as have Familiar Spirits;* so that it was not the having, but the consulting, was condemned.

¶ If we draw nearer to the words of the Text, it will

will be found, that these words, *a Consulter with a Familiar Spirit*, are no other than a *Consulter with Ob*; where the question will be what *Ob* signifieth. Expositors agree, that originally *Ob* signifieth a Bottle, and they say is applyed here to one possessed with an evil Spirit, and speaketh with a hollow voice as out of a Bottle: but for this I find no proof they bring out of Scripture, that saith, or expoundeth that *Ob* signifieth one possessed with a Familiar Spirit in the Belly; the onely proof is, that the Greek Interpreters of the Bible Translate it *Engastromuthi*, which is, speaking in the Belly; and the word anciently, and long before the time of the Septuagint Translators, was properly used for one that had the cunning or slight to shut his mouth, and seem to speak with his Belly; which that it can be done without the help of a Familiar Spirit, experience of this Age sheweth in an Irishman. We do not find it said, that the Woman of *Endor* did fore-tell any thing to *Saul*, by the hollow voice of a Familiar Spirit in her Belly; neither did *Saul* require, nor the Woman promise so to answer him; but he required, *Bring me him up who I shall name unto thee; and she undertook to do it*; which argues a desire in *Saul* to consult with the dead, which is called *Necromancy*, or *consulting with the dead*.

But it hath been said, she raised the Devil in *Samuel's* likeness, yet there is no such thing said in the Text; when the Woman went about her work, the first thing noted is, that *when she saw Samuel, she cryed out with a loud voice*: An Argument she was frightened with seeing something she did not expect

to see: it is not said, that when she knew *Saul*, but when she saw *Samuel*, she cried out with a loud voice; when she knew *Saul*, she had no reason to be afraid; but rather comforted, for that she had his Oath for her security.

It may well be, that if either she had a Familiar Spirit, or the Art of hollow-speaking, her intention was to deceive *Saul*, and by her secret voice to have made him believe, that *Samuel* in another room had answered him; for it appears that *Saul* was not in the place where she made a shew of railing *Samuel*: for when she cried out with a loud voice, *Saul* comforted her, and bid her not be afraid, and asked her *what she saw? and what form is he of?* which questions need not have been, if *Saul* had been in the Chamber with the Witch. King *James* confesseth, that *Saul was in another chamber at the conjuration*; and it is likely the woman had told *Saul* she had seen some fearful sight, which made him ask her what she saw? and her answer was, *she saw gods ascending out of the Earth*; and it may be understood, that Angels waited upon *Samuel*, who was raised by God, and not any Puppets or Devils that she conjured up; otherwise, the words may be Translated as *Deodat* in the Margent of his *Italian Bible* hath it, *She saw a Man of Majesty or Divine Authority ascend, un' huomo di Ma-jesta è d' Autorita Divina*, which well answers the question of what form is he of? which is in the singular, not in the plural number.

We find it said in *Esay* 29. 4. *Thou shalt be brought down, and shalt speak out of the ground,*
and

and thy speech shall be low out of the dust, and thy voice shall be as one that hath a Familiar Spirit out of the ground, and thy speech shall whisper out of the Earth; which argues, the voice of *Ob* was out of the Earth, rather than out of the Belly; and so the *Hebrew* Exposition which I cited before affirms. Some learned have been of Opinion that a natural reason may be given why in some places certain exhalations out of the earth may give to some a propheticall spirit. Add hereunto, that some of the Heathen Oracles were said to speak out of the Earth: and among those five sorts of *Necromancy*, mentioned by Doctor *Reynolds*, in his 76 Lecture of his censure of the *Apocryphals*, not any of them is said to have any Spirit in their Belly. The Romanists, who are all great affirmers of the power of Witches, agree, that the soul of *Samuel* was sent by God to the Woman of *Endor*: to this not onely *Delrio*, but *Bellarmino* before him agrees. That true *Samuel* did appear as sent by God, as he sent *Elias* to *Ochozias* King of *Israel*, who being sick sent to consult with *Beelzebub* the God of *Ecbreon*, may appear, for that *Samuel* is so true and certain in his prediction to *Saul*; which no Witch, no Devil could ever have told: for though the Wisdome and Experience of the Devil do enable him to conjecture probably of many events, yet positively to say, *To morrow thou and thy Sons shall die*, is more than naturally the Devil could know.

Mr. *Perkins* confesseth the Devil could not foretel the exact time of *Sauls* death; and therefore he answers, that God revealed to the Devil as

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his Instrument *Sauls* overthrow, by which means, and no other, the Devil was enabled to foretel the death of *Saul*. Here Mr. Perkins proves not that Satan was appointed by God to work *Sauls* overthrow, or that it was made known to him when it should be done.

As the rest of the Speech of *Samuel* is true, so these words of his, *Why hast thou disquieted me to bring me up?* may be also true; which cannot be, if it be spoken by the Devil; or why should the Devil tell truths in all other things else, and lie onely in this, I know no reason. Doctor Reynolds presseth these words against the appearing of *Samuel*, thus: *If Samuel had said them, he had lied; but Samuel could not lie, for Samuel could not be disquieted, nor raised by Saul.* It is true, God onely raised *Samuel* effectually, but occasionally *Saul* might raise him. But, saith Doctor Reynolds, though *Saul* was the occasion, yet *Samuel* could not truly say that *Saul* had disquieted him; for blessed are they that die in the Lord, saith the Spirit, because they rest from their labours; and *Samuel* was no more to be disquieted (if he were sent by God) than *Moses* and *Elias* were when they appeared to shew the Glory of Christ, Mat. 17. Answer. It did not displease *Samuel* to be employed in the Office of an Angel, but he obeyed God gladly; yet since the occasion of his appearing displeased God, it might for that cause displease also *Samuel*. Besides, we need not understand the disquieting of *Samuels* mind, but of his body, by not suffering it to rest in peace after death, according to the common and usual condition of Mankind: this sense the Ori-

Original will well bear. Again, it cannot be believed that the Devil would ever have preached so Divine and excellent a Sermon to *Saul*, which was able to have converted, and brought him to Repentance; this was not the way for the devil to bring either *Saul* or the woman to renounce God. Lastly, the Text doth not say that the woman raised *Samuel*; yet it calls him *Samuel*, and saith that *Saul perceived or understood that it was Samuel*.

Mr. Perkins & many others esteem *Balaam* to have been a Witch or Conjuror, but I find no such thing in the Text; when he was required to curse the people of *Israel*, his answer was, *I will bring you word as the Lord shall speak unto me*, Numb. 22. 8. and God came unto *Balaam* in v. 9. and in v. 13. *Balaam* saith, *The Lord refuseth to give me leave*; and when *Balak* sent a second time, his answer was, *If Balak would give me his house full of silver and Gold, I cannot go beyond the word of the Lord my God, to do less or more*. In v. 20. God cometh to *Balaam* and said, *If the men come to call thee, go; but yet the words which I shall say unto thee, that shalt thou do*. And when *Balaam* came before *Balak* he said, v. 38. *Lo I am come unto thee, have I now any power at all to say any thing? the word which God putteth into my mouth, that shall I speak*: and in the 23. Chap. v. 18. *Balaam* saith, *How shall I curse whom God hath not cursed?* and in v. 12. he saith, *Must I not take heed to speak that which the Lord hath put into my mouth?* These places laid together, prove *Balaam* to have been a true Prophet of the Lord; and he prophesied nothing contrary to the Lords command, therefore St. Peter calls him a Prophet.

Nevertheless it is true, that *Balaam* sinned notoriously, though not by being a Witch or Conjuror, or a false Prophet; his faults were, that when God had told him he should not go to *Balak*, yet in his covetous heart he desired to go, being tempted with the rewards of Divination, and promise of promotion; so that upon a second Message from *Balak* he stayed the Messengers to see if God would suffer him to go; wherefore the Lord in his anger sent *Balaam*. Also when God had told *Balaam* that he would bless *Israel*, yet *Balaam* did strive to tempt God, and by several Altars and Sacrifices to change the mind of God. Again, when *Balaam* saw God immutable in blessing *Israel*, he taught *Balak* to lay a stumbling-block before the Sons of *Israel*, to eat things sacrificed to Idols, and to commit Fornication, *Rev. 2. 14*. Whereas it is said that *Balaam* went not up as other times to seek for Enchantments, *Num. 24. 2*. the Original is, to meet Divinations, that is, he did not go seek the Lord by Sacrifices, as he did, *Numb. 23. 3. 15*.

An exact difference between all those Arts prohibited in *Deut.* no man I think can give; that in some they did agree, and in others differed, seems probable. That they were all lying and false Prophets, though in several ways, I think none can deny. That they differed in their degrees of punishments is possible; there are but three sorts, that can be proved were to be put to death, *viz.* the Witch, the Familiar Spirit, the Wisard. As for the Witch, there hath been some doubt made of it. The *Hebrew* Doctors that were skild
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in the Laws of *Moses*, observe, that wheresoever one was to die by their Law, the Law always did run in an *affirmative precept*; as, the Man shall be stoned, shall die, shall be put to death, or the like; but in this text, and no where else in Scripture, the sentence is onely a *Prohibition negative*, *Thou shalt not suffer a Witch to live*, and not, *Thou shalt put her to death*, or stone her, or the like. Hence some have been of Opinion, that not to suffer a Witch to live, was meant not to relieve or maintain her by running after her, and rewarding her. The *Hebrews* seem to have two sorts of Witches, some that did hurt, others that did hold the Eyes, that is, by juggling and slights deceived Mens senses. The first they say was to be stoned, the other, which according to the proper notation of the word was the true Witch, was onely to be beaten.

The Septuagint have translated a Witch, an Apothecary, a Druggister, one that compounds poysons; and so the Latin word for a Witch is *venefica*, a maker of poysons: if any such there ever were, or be, that by the help of the Devil do poyson, such a one is to be put to death, though there be no Covenant with the Devil, because she is an Actor and principal her self, not by any wonder wrought by the Devil, but by the natural or occult property of the Poyson.

For the time of Christ, saith Mr. Perkins, though there be no particular mention made of any such Witch, yet thence it followeth not that there were none, for all things that then hapned are not Recorded, and I would
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fain know of the chief Patrons of them, whether those persons possessed with the Devil, and troubled with strange Diseases, whom Christ healed, were not bewitched with some such people as our Witches are? if they say no, let them if they can prove the contrary.

Here it may be thought that Mr. Perkins puts his Adversaries to a great pinch; but it doth not prove so: for the Question being onely whether those that were possessed in our Saviours Time were bewitched; The Opposers of Mr. Perkins say they were not bewitched: but if he or any other, say they, were, the Proof will rest wholly on him or them to make good their *Affirmative*; it cannot in reason be expected that his Adversaries should prove the *Negative*; it is against the Rules of Disputation to require it.

F I N I S.
